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No. 1883

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.

THE UNITED STATES OF AMERICA (Complainant),
Appellant,

vs.

THE BARBER LUMBER COMPANY (a Corporation),
(Defendant), Appellee.

VOLUME XI.

(Pages 4001 to 4400, Inclusive.)

Upon Appeal from the United States Circuit Court
for the District of Idaho, Central
Division.

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(Deposition of L. G. Chapman.)

Q. And how about the straight marks or dots on page 30, township 7 north of range 7 east, do you know who put them in there?

A. No, I don't.

Q. Then you don't know what they mean, other than a system of checking that you had at that time, which was uniform, as I understand?

A. That is all.

Q. As a matter of fact, you didn't know whether you put the red check marks on page 7, 6-4, or not, do you?

A. The red straight marks?

Q. Yes. A. No, I don't.

Q. And you haven't anything to base your belief upon that you did put them there, have you?

A. No; other than I usually did that part of the work.

Q. Now, I find on page 9 some heavy black dots, look like a period, and also some straight marks with a blue lead pencil. Did you put them in there?

A. No.

Q. What do those marks mean to you?

A. Nothing at all.

Q. You don't know what they are in there for?

A. If you will notice, there is no heading to the page.

Q. Look at page 29, township north, range 7 east, and you will see some straight marks there in red ink. Do you know who put them in there?

A. No, I don't.

Q. How long before Hoseley left the employ of the company did you purchase his timber ticket?

(Deposition of L. G. Chapman.)

A. I don't remember, but I think we bought his claim after he left us.

Q. And did you put the check marks in this book indicating Hoseley's claim?

A. The straight marks in here indicate his claim.

Q. I will ask you to find that.

A. The red marks in section 28, plat of township 6 north, 8 east, on page 40, shows his claim.

Q. They are in section 28?

A. Yes.

Q. Do you remember when he entered his claim?

A. He entered his claim when he was out here first.

Q. That was in August, 1903, I think he testified.

A. I think so, about that time.

Q. Some time before he came in September. And then those marks could have been put in there prior to September, 1903, as indicating that an entry could have been made on that land? Is that correct?

A. They could have been, if anyone had information as to the entry.

Q. Do you know whether those marks in section 28, township 6 north of range 8 east, were made by you or Mr. Moon, or haven't you anyway of telling?

A. I am satisfied in my own mind that they were made here, by myself, or by Mr. Cobb.

Q. But you have no independent recollection of it?

A. No, I know that they are not Mr. Moon's marks.

Q. Mr. Moon made the other marks, didn't he?

(Deposition of L. G. Chapman.)

A. Yes; I know his check marks.

Q. You said that you purchased John I. Wells' claim, did you? A. Yes.

Q. Did you purchase the claim of Mrs. Jennie Wells, the wife of Mr. John I. Wells?

A. No, not that I remember of.

Q. Did you purchase the claim of Mr. Patrick Downs? A. No.

Mr. BUNDY.—Do you mean you didn't, or the company didn't? A. I mean that I didn't.

Mr. KEIGWIN.—Q. Do you know whether the company did or not?

A. Yes, I know the company did.

Mr. BUNDY.—Before he came here?

Mr. GORDON.—Now, I understood you to say that as soon as the company, or the officers of the company, became aware that an entry had been made, or, as you stated, the land had been segregated, that it was the custom of the company, if they had in view the purchase of that land, to indicate that entry had been made by a red mark in this book.

A. No.

Q. Well, in some book.

A. I don't know whether it was a red mark; we always indicated in some form the initial entry of every timber and stone claim that we could find an advertisement for.

Q. And that was indicated by a straight mark?

A. That was indicated usually by a straight mark.

(Deposition of L. G. Chapman.)

Q. And when you acquired title to that, you continued that straight into a check mark?

A. Yes.

Q. When did you consider that you had title—when you got a deed?

A. When we took a deed from the entryman.

Q. Or when somebody had taken title for you?

A. Yes.

Q. In trust for the company? A. Yes.

Redirect Examination.

(By Mr. BUNDY.)

Q. Mr. Chapman, you used the word “entry” that you made a check mark on some book when the entry was made. Now, when did you make that mark? Where did you find out, what was your means of determining when you made the first mark to indicate that the lands were segregated?

A. We went through, each week, the newspapers publishing the notices given from the land office, for a time, cut them out and kept them on file, and made such notations from them as would give us the information as to the time of entry and by whom entered.

Q. Prior to coming out here you were at the Stanley plant of the Northwestern Lumber Company for a good many years, were you not?

A. Yes.

Q. The Northwestern Lumber Company owns a good many thousand acres of timber and other lands in that vicinity? A. Yes.

(Deposition of L. G. Chapman.)

Q. And had a good many plats of their holdings under your management and control?

A. Yes.

Q. Are you very familiar with the check marks of S. G. Moon? A. Very.

Q. And of J. T. Barber? A. Yes.

Q. You have seen them for years, and a great many thousand of them, haven't you?

A. Yes, twenty years, and a good many thousand.

Q. Is there anything characteristic about a check mark that you cannot determine—

A. I think I could recognize their check marks.

Q. I will ask you as to whether or not the straight marks on 6-4, page 7 of this book, plat book, are in the handwriting of either J. T. Barber or S. G. Moon? A. No, they are not.

Mr. BUNDY.—Now, gentlemen, I want to put on record a demand that you produce at Eau Claire this exhibit No. 141A, for the inspection of Mr. Barber and Mr. Moon, when testifying.

Mr. GORDON.—I will suggest that these exhibits are on file here, and there is an order of the Court that we can take them. I don't see why you should make it incumbent upon us to take that book there.

Mr. BUNDY.—You already have an order to take it. It is your exhibit and I would rather you would take it and produce it there; it is your exhibit.

Mr. GORDON.—All right.

(Witness excused.)

[Deposition of Patrick H. Downs, on Behalf of the Defendants.]

PATRICK H. DOWNS, produced as a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. BUNDY.)

Q. Mr. Downs, you are the Patrick H. Downs that is mentioned as one of the defendants in this case, I believe? A. I believe so.

Q. And you live in the city of Boise?

A. Yes, sir.

Q. And have lived here for how long, Mr. Downs?

A. I have lived here since August, 1901.

Q. Prior to August, 1901, where did you live?

A. Minneapolis.

Q. And for how long had you lived at Minneapolis?

A. I don't know—somewhere between twenty-eight and thirty years.

Q. And what was your business while you resided at Minneapolis, generally speaking?

A. Well, I did a little work in the lumber business, cruised some, worked generally, logging camps.

Q. You came to Boise directly from Minneapolis?

A. Yes, sir.

Q. State the circumstances of your coming out here, and why you came.

A. Well, it was through an advertisement in one of the Minneapolis papers. There was a party

(Deposition of Patrick H. Downs.)

named Paris & Manning was locating timber lands in Idaho, so I went down to their office and interviewed them. They told me the price for locating was \$135.

Q. And what did that include?

A. That included our transportation from Minneapolis to the timber, and from the timber back to Boise.

Q. Did you employ the firm of Paris & Manning under that arrangement to send you out here?

A. Yes, I paid them my \$135, and took a receipt.

Q. And came here on their transportation?

A. Yes.

Q. Did anyone come with you?

A. Yes, Mr. Snow came with me.

Q. Was there anyone else in the party?

A. There were two women.

Q. Do you remember their names?

A. I remember one, Miss Julia Anderson.

Q. Do you recall the other one?

A. I don't remember the other's name.

Q. On your arrival at Boise was one of the firm here?

A. Mr. Manning was here.

Q. State what he did with reference to locating you?

A. He got a rig, paid for it, and took us to the timber.

Q. Where was that timber?

A. In the Boise Basin.

Q. Who was in the party that went up?

A. Mr. Snow, Mr. Manning, and a lady friend of Mr. Manning's, and these two women that came with

(Deposition of Patrick H. Downs.)

us, and myself.

Q. Did he locate you on a claim?

A. No. He showed us the timber there, and he didn't seem to have any of it cruised, and I told him I could find a claim myself, so we started out.

Q. Did you select one yourself? A. Yes.

Q. Filed on it? A. Yes.

Q. Finally made final proof? A. Yes.

Q. Subsequently sold it? A. Yes.

Q. Did Mr. Manning locate the other members of the party? A. No, we selected it for them.

Q. After viewing the land you came back here in the usual way and filed your papers?

A. Yes, sir.

Q. What did you do, then, before the day of final proof came, in the way of employment?

A. We went back up in the Basin and cruised awhile.

Q. You say we. Who do you refer to?

A. Mr. Snow and I.

Q. What was your purpose, and by whom, if any-one, were you employed to go back there?

A. Mr. Manning asked us to go back there. He said he didn't have any cruiser and couldn't cruise himself.

Q. So you went back at his suggestion?

A. Yes, sir.

Q. What lands did you cruise at that time?

A. We cruised lands in 7-5.

Q. That was in August, 1901?

A. Yes, August or September.

(Deposition of Patrick H. Downs.)

Q. What happened to Mr. Manning about that time?

A. He went back; didn't make a success of the locating business.

Q. Did he leave the country?

A. Then after he left Mr. Wells and I went into the locating business.

Q. Manning left, did he? A. Yes.

Q. About what time was it that Manning left?

A. I think he left in the early part of September.

Q. And, in the meantime, you had been cruising up there? A. Yes.

Q. Had he paid you anything for cruising?

A. No.

Q. What suggested to you, Mr. Downs, the advisability of going into the cruising business?

A. Well, first for Manning, or for myself, I see the whole country was vacant there; there was only a few claims that we filed on that came from Minneapolis, so I thought I would go into the locating business myself.

Q. Did you go to work systematically to cruise the country? A. Yes, sir.

Q. At that time did you know John I. Wells, when you first came out here?

A. I guess I met him on the first trip up there.

Q. But you didn't know him when you came?

A. No.

Q. Did you know Kincaid? A. No.

Q. Steunenberg? A. No.

Q. Barber? A. No, sir.

(Deposition of Patrick H. Downs.)

Q. Mr. Moon? A. No, sir.

Q. Pritchard? A. No.

Q. Did you have any acquaintance here at all when you first came?

A. No, I was a stranger here.

Q. Where was John I. Wells at that time?

A. Living at Centerville.

Q. What business was he in at that time?

A. I think he was in the saloon business with his brother Hal.

Q. Did you get acquainted with him there?

A. Yes.

Q. State what, if any, first arrangements you had in connection with Mr. Wells, and how it came about?

A. I was cruising there awhile, and Mr. Wells, I guess had done some locating. He went into business on one side of the creek. So I met him down town one day, that is, in Centerville, and I asked him, "What's the matter with him and I joining here, charging a fee and split the fee, each to make half of the fee." He said he didn't know whether we would make a success of it or not. He said he was well acquainted here and that he would try.

Q. So you started?

A. Yes, I had considerable country cruised then. I said I have lots of claims here.

Q. And Mr. Wells then came down to Boise?

A. Yes, sir.

Q. And looked after the business at this end?

A. Yes, sir.

(Deposition of Patrick H. Downs.)

Q. While you looked after the business there?

A. Yes, I did the cruising.

Q. Your part of the business consisted of what?

A. Cruising the land and showing it to people.

Q. What was Mr. Wells' business?

A. He was sending the people to me.

Q. What made it necessary to have someone here to send people up in squads or together?

A. Well, we figured that it would make a better success to have two in the business, one at each end of the line.

Q. What did Mr. Wells do in town here with reference to getting up parties, and why was it necessary to have them *to* up in parties?

A. Well, we were charging only a certain fee, and they paid their own expenses. So then by sending them in parties, you know, they divided up the cost of the livery rig and the likes of that and it made it cheap on them.

Q. And how about witnesses?

A. That helped too. Being together they could be witnesses for each other.

Q. What charge did you make for locating people on a quarter section? A. \$25.

Q. During the fall of 1901 and the early winter of 1901 you and Mr. Wells together located a good many people in that country, did you not?

A. Yes, sir.

Q. State as to whether or not you practically exhausted all the desirable timber claims in the Basin except 6-4 during the fall of 1901?

(Deposition of Patrick H. Downs.)

A. No, we didn't. I worked there till Christmas; then the snow got too deep; we couldn't get people on the land.

Q. What did you do when the snow got too deep?

A. Came to Boise.

Q. And did nothing the rest of the winter, I suppose, in the way of cruising?

A. No, I stayed here until about the middle of February, 1902.

Q. When you went back again. Where did you commence operations the next year? A. 6-6.

Q. Did you cruise that? A. Yes.

Q. Had you cruised it before?

A. No, I started in there about the middle of February.

Q. When did you begin locating people in there?

A. We commenced locating people in there along in March, some time in March.

Q. How long did the timber last there before it was all located?

A. I worked there until, I think, it was the first of April, when I came back.

Q. The first of April?

A. Somewheres about the first of April, I think.

Q. At that time to what extent had you got it located up there, Mr. Downs?

A. I don't know how many claims I had located there then. I located some afterwards in the summer of 1902, over in the Basin, Centerville, Grimes Creek country.

Q. Well, after you had cruised the Basin country

(Deposition of Patrick H. Downs.)

that you have told us about, what did you next cruise, what section of the country?

A. I think I cruised the Crooked River country.

Q. What summer did you do that?

A. 1902, I think it was.

Q. When did you begin locating people in that section?

A. I think I started some time in August, 1902.

Q. At the time you cruised in Crooked River had the Basin country been pretty well located, except 6-4?

A. Yes.

Q. Only a few scattering claims left there?

A. Yes.

Q. Then you located people in the Crooked River country during the fall of 1902?

A. Yes.

Q. How late did you keep that up there that year?

A. I think I stayed until the early part of October.

Q. Where did you go then?

A. Came to Boise.

Q. How long before you again went to the woods to locate?

A. I don't think I went locating until the next spring, 1903.

Q. And then you located a few more people in the Crooked River country?

A. I located scattering claims.

Q. Then, at that time, had the Crooked River and Basin country been pretty well exhausted?

A. Yes, sir.

(Deposition of Patrick H. Downs.)

Q. When did you cruise 6-4, if at all?

A. I cruised 6-4 some time in 1903, I think it was.

Q. That was the last town you cruised?

A. Yes.

Q. When did you begin locating people on that?

A. In September, 1903.

Q. That was the day after the state selections were made?

A. Yes, sir.

Q. Mr. Downs, in cruising this land state as to whether or not you were acting for any person, Mr. Barber, Mr. Moon, Mr. Steunenberg, Mr. Kinkaid, Mr. Wells, the Barber Lumber Company, or any other person?

A. No, sir.

Q. For whom were you acting?

A. Myself.

Q. In locating people upon these lands state as to whether or not you were acting for any person other than yourself?

A. Myself.

Q. Were you at any time employed, by salary or otherwise, by any of the defendants in this action, or any other person, for locating people, or cruising lands for location purposes?

A. I was not.

Q. Did you have any interest in the locations made by you other than your fee as a locator that you have told us about?

A. Just my fee.

Q. Did you have any interest, by way of salary, commission, or otherwise, in the sale of the land to any person?

A. No.

Q. Were you acting as the agent of any person buying or any person selling any of those lands?

A. I was not.

(Deposition of Patrick H. Downs.)

Q. Were you ever employed, by way of salary, commission, or otherwise, by the Barber Lumber Company, Mr. Barber, Mr. Moon, Mr. Steunenberg, Mr. Kinkaid, Mr. Wells, Mr. Pritchard, Mr. Palmer, Mr. Long, Mr. Rand, or anybody else for the purpose of locating people upon land? A. I was not.

Q. Now, I think you were employed on a few occasions, as shown by the books here, by Governor Steunenberg and by the Barber Lumber Company, perhaps, in making several trips up into the country, were you not? A. Yes, sir.

Q. I will ask you as to whether any of those trips, or any of those employments related to either cruising or locating entrymen under the Timber and Stone Act?

A. No, they just took me along as a guide to show them the country.

Q. Did you do any work with them in the matter of scrip? A. Yes.

Q. What work did you do for the company or for Governor Steunenberg, or any person named in the matter of scrip?

A. I selected some scattered forties up there and posted notices.

Q. You were paid for it by the job?

A. Yes, paid by the day.

Q. You never were in the regular employment of the company or Governor Steunenberg, or any of the parties I have mentioned? A. No, sir.

Q. How long did your arrangement with John I. Wells continue by which he was to look after the lo-

(Deposition of Patrick H. Downs.)

eating business at this end and you at the other end, and divide the fee?

A. I think it was up to the time of the 6-4 lands.

Q. That is, the arrangement continued through the original Basin entries of 1901 and 1902, and the Crooked River entries in the fall of 1902 and the spring of 1903?

A. Yes, sir.

Q. When you came to locate 6-4 you and Mr. Wells severed your partnership as locators?

A. Yes, sir.

Q. Did anyone have any interest at all in locating there other than yourself?

A. No.

Q. Did anyone get any part of the fee that you charged the people in 6-4?

A. No, I got all the fee in that.

Q. It appears here that Mr. John Kinkaid made out the filing papers for all the people that you located in 6-4, and who filed on that first day, including the original filing papers and the non-mineral affidavit, and so forth, and it also appears that Mr. Kinkaid assisted some in arranging parties to go up there. Will you state under what arrangement Mr. Kinkaid did that work?

A. I got Mr. Kinkaid to make out the filing papers so as to have them ready for the line-up. We heard some of it was going to be scripped, and any of it lost, that I didn't get, that I had cruised, I would lose my fee, my location fee.

Q. You were not paid your location fee in any case, were you, until their filing was accepted?

A. No, never; they wouldn't pay it.

(Deposition of Patrick H. Downs.)

Q. Did you pay Mr. Kinkaid for that work?

A. I paid him \$50.

Q. Mr. Kinkaid at that time was a lawyer, living here in the city?

A. Yes, sir.

Q. Maintained an office here?

A. Yes, sir.

Q. Did Mr. Kinkaid have any other interest in the lands you were locating other than you employed him to make the papers out?

A. Not that I know of.

Q. Did your \$25 fee which you charged these people include making out proper papers for them?

A. The reason I made the arrangement with Mr. Kinkaid I didn't want any mistake made in the papers in 6-4.

Q. Tell us why you were so fearful of a line-up there and danger of your locators not getting their lands, there in 6-4?

A. I had a slight intimation that there was a party going to scrip it.

Q. Now, you located these people in 6-4 practically all, I believe, within a few days before they filed?

A. Yes, sir.

Q. Do you remember the day of the week you started doing this?

A. No, I can't.

Q. It was the week before, wasn't it?

A. Yes, the week before I think.

Q. Was there any reason why you hadn't begun locating there before, and if so, what was it?

A. I heard the State had been selecting in there, and I didn't know what part they had selected.

Q. Did you finally find out, Mr. Downs, what

(Deposition of Patrick H. Downs.)

lands the State had selected? A. I did, yes, sir.

Q. Did you employ anyone to find out for you?

A. Yes, sir.

Q. Who did you employ? A. Mr. Kinkaid.

Q. Did you state as to whether or not you paid him for the work he performed for you?

A. I gave him \$20 for it.

Q. State as to whether or not he furnished you with a list of the lands which the State was going to select?

A. Yes, he got me the minutes of the State selection in 6-4.

Q. And when you read those you were prepared to begin? A. I knew what was left.

Q. At that time state the conditions down here in Boise, Mr. Downs, with reference to the number of people that were looking for timber claims.

A. During that summer, while I was in town, I used to meet several on the street every day.

Q. Have many applications?

A. Yes, more applicants than I had timber.

Q. How was it with reference to the Crooked River country during the fall of 1902 as to the applications you had at that time?

A. Well, there was a great many applicants for Crooked River too.

Q. Did it require any solicitation or urging on your part to get people to locate?

A. No, sir, lots of them was up there in droves waiting for me.

Q. People came faster than you could tend to

(Deposition of Patrick H. Downs.)

them? A. Yes, sir.

Q. At the time you located these people on the lands, did you take them on to the lands they located on? A. Yes, sir.

Q. Did you show them the correct corners?

A. Yes, sir.

Q. Did you with any of them have any discussion at all with reference to what they were going to do with their claims? A. No, sir.

Q. Did you have any interest whatever, Mr. Downs, in what they did with their claims?

A. No, sir.

Q. Were you ever, in any manner, directly or indirectly, connected with the sale of the lands which were procured by the people you located upon them?

A. No, sir, it was immaterial to me whether they sold or not.

Q. Had you any interest in it other than your locator's fee you have testified to?

A. Just my locator's fee.

Q. There was a gentleman here by the name of Mr. Hobbs who testified that he didn't go onto his land. Will you tell us, Mr. Downs—

A. I took him as far as he would go, and told him I didn't want to locate him that way; I wanted him to see his land.

Q. He laid down on you?

A. He said he was tired out, didn't want to go any further.

Q. As long as he could see it across the valley he was ready to swear to it? A. Yes, sir.

(Deposition of Patrick H. Downs.)

Q. Do you recall any other instance of people who refused to go onto the land?

A. No, I don't.

Q. There was one entry made by a man by the name of Benjamin R. Allen. Do you remember who paid the location fee for him?

A. I think it was a man named Humphrey.

Q. What was the fee paid, location fee; what was the amount? A. \$25.

Q. Was the price for locating always the same, Mr. Downs, from the time you began until the time you finished?

A. No, I raised the price after it got so they would stand for it.

Q. What price did you charge them?

A. First made it \$50.

Q. And some you got even more?

A. Oh, yes; I have got as high as \$125.

Q. What was the custom, Mr. Downs, with these people you located as to giving them their numbers, descriptions; how did you do that?

A. I used to write out each one's minutes of his claim, and the whole bunch that was with him, the whole bunch together, and put them in an envelope and give them to someone in the party I knew to take them down here and have Wells collect the fee for me.

Q. That would be sealed up, I suppose?

A. Yes.

Q. Mr. Wells then collected most of the locating fees at this end, while you and he were together?

A. Yes, sir.

(Deposition of Patrick H. Downs.)

Q. Who collected for you, if anyone, on the 6-4 lands?

A. I did myself; they paid me right after they filed in the land office.

Q. Do you recall the line-up on September 14?

A. Yes, sir.

Q. You were here at that time, were you not?

A. Yes, sir.

Q. And took some part in caring for the people in line in the matter of getting them lunches, and so forth?

A. Certainly, I was interested in getting my \$25.

Q. And if anything happened to these claims you lost your \$25? A. Yes, sir.

Q. Did you stay with them all night and keep them there? A. Yes, sir, you bet I did.

Q. When you came out here from Minnesota was it with the expectation of staying here?

A. Well, I hadn't my mind clearly made up to that, but I had my claim here and I just stayed here until the time of my proof, and the more I looked over the country the better I liked it, so I made up my mind to stay here.

Q. Were you ever at any time employed by Kinkaid, Wells, Steunenberg, the Barber Lumber Company, Mr. Chapman, Mr. Rand, Mr. Long, Mr. Palmer, or Mr. Pritchard, or any other person other than the entrymen or entrywomen you located, for the purpose of locating them or anyone else on timber lands in this section?

A. No, sir, I was not. I worked some on scrip—that was all.

(Deposition of Patrick H. Downs.)

Q. The question related to locations. Did you ever locate a single entryman or entrywoman at the request of any of the parties I have named?

A. No, sir, I did not.

Q. Did any of the parties I have named, or anyone else, ever suggest to you or tell you upon what lands you should locate any person or persons?

A. No, sir, I selected the claims myself.

Q. Were you employed by any of the persons I have named for the purpose of cruising those towns prior to locating people upon them?

A. No, sir, I was not.

Q. Who paid your expenses while you were cruising and getting the information necessary?

A. I did myself.

Q. Mr. Downs, when you got the information from Mr. Kinkaid as to what lands the State was going to select, did you tell anybody about it?

A. No, I checked off a plat of my own.

Q. But you didn't advertise the fact?

A. No, sir, I should say not.

Q. Did you know of a man by the name of Lake who had been doing some scrip work for the Barber Lumber Company, having cruised some there in 6-4?

A. I saw his tracks up there; met him once.

Q. What gave you the idea that they were going to scrip that?

A. The nearest of my recollection is that somebody that wanted a timber claim—I don't remember who it was—

Q. Told you about it?

A. Yes.

(Deposition of Patrick H. Downs.)

Cross-examination.

(By Mr. GORDON.)

Q. Mr. Downs, when you came from Minnesota here were you married? A. No, sir.

Q. You have married since you came?

A. I got married here in the west.

Q. Do you know how much money you brought with you when you came from Minnesota?

A. I think I had somewheres, something over \$400, between four and five hundred dollars.

Q. Wasn't that arrangement with Paris & Manning that you and the rest of the party would come out here and take up a timber claim, and convey it, when you got your final proof, to a company that they were going to form? A. No, sir.

Q. You didn't testify to that before the Grand Jury here, did you?

A. No, sir, I didn't. I don't think I did, because I couldn't.

Q. I will ask you whether or not, when you were before the Grand Jury in this room, in March, 1907, you didn't testify that you came out here with a party at the instance of Messrs. Paris & Manning, and that you were to pay \$137.50, and they would pay your railroad fare here and up to see the land and back to Boise? A. Yes, sir, \$135—not \$137.50.

Q. And that you were to convey that timber claim that you took up to a company that Paris & Manning had formed, or would form?

A. No, sir, I don't think I did, because I don't remember any such conversation as that between

(Deposition of Patrick H. Downs.)

Paris & Manning and I, or anybody else.

Q. You had been a timber cruiser in Minnesota, hadn't you? A. I cruised some there, yes.

Q. And you were just carried away by an advertisement in a newspaper, and were willing to come clear across the country and pay \$135 to see a timber claim that you didn't know whether it was good or bad. Is that correct?

A. Yes, sir. We had an agreement though before we left that if the timber didn't suit us the money was to be refunded. Another thing, I wanted to come west anyhow; I had it in my mind to come west anyhow.

Q. With whom did you have an agreement?

A. With Mr. Paris.

Q. What is his name, do you know?

A. I couldn't tell you his initials. I did know at the time, but I couldn't tell you now.

Q. Is he still in business at St. Paul?

A. I never heard of him since the last—the last I seen him was when he received my \$135.

Q. How much money did he give you back?

A. I don't know—he give us back—he paid for our sleeping berth from Minneapolis to Omaha, and then I think he give us back enough to pay our sleeping berth from Omaha to Boise.

Q. And that is all? A. Yes, I think so.

Q. And none of the party that came liked the timber?

A. There was three of us took claims.

Q. Who took you up into that country? I un-

(Deposition of Patrick H. Downs.)

derstood you to say that you didn't like the timber this man showed you, and you went off and located yourself.

A. No, he didn't have any claims run out. All he could show us was the notice posts there, and I said "That's good enough for me," and I went off and located myself.

Q. Did Snow take a timber claim?

A. Yes, sir.

Q. What did he do with his?

A. I don't know—probably sold it, I guess.

Q. Did he take a homestead at the same time?

A. I think he did, shortly afterwards, sometime afterwards.

Q. Do you know where that homestead was?

A. It was up not far from his timber claim. If I remember right, it was in the same section with my timber claim.

Q. And then you and Snow worked together for a time, didn't you?

A. Yes, sir, we located awhile.

Q. Were you and Snow partners for a time?

A. Yes, sir, I was cruising and he came down here.

Q. He came down and rustled the people out?

A. Yes, sir.

Q. Then did you and Wells and Snow for a time go into partnership?

A. Yes, it was a partnership for awhile, for a short time.

Q. And how long did Mr. Snow stay here the

(Deposition of Patrick H. Downs.)

first time he came?

A. Well, I think he stayed here until after he made proof on his timber claim. I don't know how long after that he stayed. I guess he stayed quite a long time.

Q. Do you remember that Mr. Snow went home because his mother was ill, or died?

A. I know he went east in the fall, that is all, 1901, sometime in October.

Q. Do you remember when he returned?

A. No, I don't.

Q. He stopped with you when he did return, didn't he?

A. No. He was here in Boise, I met him here that summer. I was very busy cruising. I wasn't in the city much at all.

Q. Did you write some letters to Mr. Snow after he left here and went back in the fall of 1902?

A. No, I don't remember that I did. I don't know whether I did or not.

Q. Never wrote him any letters telling him about the suspension that had been put on, but that there was an inspector that was out here that had been fixed up, and that now you could do some more locating?

A. I don't know whether I did write him any such letters at all.

Q. Would you say you didn't write them?

A. I don't think I did.

Q. Will you say you didn't?

A. To the best of my recollection, I didn't.

(Deposition of Patrick H. Downs.)

Q. Do you remember when Mr. Snow came back here that you told him he couldn't prove up on his homestead?

A. No, I didn't tell him—I don't believe I told him any such thing.

Q. Didn't you tell him that the company was going to get that, and that a contest would be filed against it?

A. I didn't tell him any such thing—no company.

Q. Who did you tell him was going to get it?

A. I didn't tell him anybody.

Q. You knew a contest was filed?

A. I don't know. He called on me once afterwards as a witness for final proof, or offering proof, on a homestead, but I told him I couldn't appear—I was too busy.

Q. And you didn't tell him that the company was going to get it anyhow? A. No, sir.

Q. The company did get it, didn't they?

A. I guess they did. I guess he lost his homestead or sold his relinquishment, or something.

Q. Who were the first persons that you located in 6-4?

A. Well, sir, now that is a pretty hard thing for me to recollect—the first ones or the last ones either.

Q. How long did you locate people in 6-4 before you said the State made its selection?

A. I was up there probably five or six days.

Q. And you located them all through that week?

A. Yes, sir.

Q. And it was at that time that you had an in-

(Deposition of Patrick H. Downs.)

timination from Mr. Lake, I understand, that somebody was going to scrip it?

A. No, I told you that I didn't remember who it was, but it was somebody to the best of my recollection that took a timber claim up there. I heard some way—I don't remember who it was now.

Q. You had cruised it sometime before that?

A. Yes, sir, I cruised the whole town.

Q. Do you remember on one occasion when Mr. Snow was here that you and he were walking down the street and you showed him Mrs. Burns and said "that is the lady that bilked those fellows out of \$400"?

A. I don't remember any such thing as that.

Q. You have seen that lady, haven't you?

A. Yes, I have seen her, but I don't remember any conversation like that at all.

Q. Will you say you didn't have any such conversation?

A. I don't think I did. I don't think I could have, because I don't think I knowed anything about it at the time Snow was here. Is that some of Snow's junk?

Q. Now, when was it that you went to John Kincaid to employ him to get the description of the land that the State was going to select?

A. Oh, it was probably two or three weeks before I went up there. I just met him on the street, and I told him I had cruised that whole town in there, and I heard the State was making its selection in there, and I said, "By ginger, I would like

(Deposition of Patrick H. Downs.)

to find out what the State was going to select in there.”

Q. And did he get it that day?

A. No. I don't remember; he got it shortly before I went up there to locate.

Q. And did you leave a copy of that with him?

A. No.

Q. What did he give you,—a plat or a description of it?

A. I think he gave me a description, I think it was a description.

Q. It wasn't a plat?

A. I don't remember exactly. I know I checked a plat of my own. I marked off what the State had, and I knew what was outside.

Q. And I understood you to say you paid him \$50 for that? A. No, I paid him \$20.

Q. And these people that you located in 6-4—did you tell them all to go to Kinkaid and have their papers made out by him?

A. I told any of them that couldn't make out their papers to go to him.

Q. And you told them there was a chance that it would be scripped, and they had better go and get in line? A. Yes, sir.

Q. Did you tell them all that?

A. I told enough so that they would tell the rest.

Q. Do you remember any of them that you told that?

A. No, I don't remember any particular one. I

(Deposition of Patrick H. Downs.)

know I told some of them. I know I was awfully busy up there getting over that land in five or six days.

Q. Now, could you point out on a plat the lands that you scripped for the Barber Lumber Company in 6-4?

A. I possibly could. I don't know whether others worked in there or not scripping. I know I worked in there for Mr. Steunenberg.

Q. If I show you the plat can you point out any you scripped there? A. Possibly I could.

Q. Do you know how many pieces you scripped in 6-4?

A. No, I don't. I scripped some in 6-4, some in 7-4, some in 7-5, and some in 7-8.

Q. Now, how did you survey these sections, or quarter sections, and run them out? Did you make them in squares or did you make them in forties, and all sorts of shapes?

A. No, we picked out what vacant forties there was other than what was taken either by the State or these people that took up timber claims.

Q. I mean this: The sections and quarter sections are in squares? A. Yes, sir.

Q. And in some of the locations that you made you located persons on pieces of land that were not in squares, but in different shapes.

A. Yes, I selected the corners the way the timber grewed on the land. I didn't want to select land for an applicant that didn't have any timber on it.

Q. Didn't you make some of those selections for

(Deposition of Patrick H. Downs.)

persons, and segregate forties, and the forties that were segregated had a good deal more timber on that the ones you located the people on?

A. No, I picked out all the best timber for my applicants. I wanted them to be pleased when they seen their claims.

Q. I will ask you whether or not you didn't have an agreement with Mr. James T. Barber to the effect that he would give you \$5 for every forty that you segregated and isolated?

A. No, sir, I did not. I don't know whether Mr. Barber knew anything about me then or not.

Q. Can you look at that plat in 6-4, and point out the pieces that you located scrip on? (Hands witness paper.)

A. I think all them red ones there are the ones I selected.

Q. Can you describe them?

A. Northwest quarter of the southeast quarter of section 27; that is the southeast quarter of the southeast quarter of section 30.

Q. Is that all in 6-4 that you scripped?

A. I think it is.

Q. Is that scrip (indicating) and that scrip (indicating)? A. There? (Indicating.)

Q. Yes.

A. No, I don't think it was. That is timber and stone.

Q. Did you scrip this in there (indicating)?

A. I don't remember. I couldn't tell you. That was long ago, after I got my pay for it; I had no rea-

(Deposition of Patrick H. Downs.)

son to; I haven't any recollection of that scrip business.

Q. I understood you to say that Kinkaid got you the minutes of the State selection.

A. Yes, sir, that is what I asked him to get.

Q. What do I understand you to mean by he got the minutes?

A. What we call the minutes, the legal subdivisions of the quarter sections—the legal subdivisions or the forties, or hundred and twenties, or hundred and sixties.

Q. Did you tell any of the people that located in 6-4 to go to the land office and line up?

A. I told some of them; I told enough of them, and I said to tell the rest of them that they are liable to lose out if they don't get into line.

Q. Were you down here Saturday night, or did you get back Sunday?

A. I think it was the day before the opening.

Q. That was Sunday then.

A. I think so; I don't remember the day of the week.

Q. Now, who was with this man Hobbs the day you located him? A. I think that—

Q. A man by the name of Granger?

A. No, I think it was Sam Vance, and a fellow named Allen.

Q. Benjamin Allen?

A. I don't remember his first name.

Q. Did any of them go to the land that day?

A. Sam Vance said he had been on this land, and

(Deposition of Patrick H. Downs.)

I said these other two have got to go. I said, "I don't want you to go down and testify in the land office that I didn't show you your land."

Q. They didn't go on the land? A. No.

Q. And you gave them the numbers?

A. They asked me for the numbers, and I gave them to them.

Q. And all of these people you located—you weren't afraid that any of them would beat you out of your location fee after you gave them the numbers? A. This in 6-4?

Q. Yes.

A. No, sir, I was right here, and I collected when they filed.

Q. All of them?

A. Yes, sir, I think all of them paid me in 6-4 either in the land office or down on the street after they got down out of the old land office in the Sonna Building.

Q. Did Mr. Coleman pay you there, or did you go to the blacksmith-shop and get that?

A. I think I went to the blacksmith-shop.

Q. Where did Mr. Harbaugh pay you?

A. I think he paid me in his assay office—he paid me part, and I think he done a little work for me in assaying. I think he done a little work for me on a coal prospect.

Q. Harbaugh, I mean,—not Hobbs.

A. As I remember—I think Harbaugh paid me there—I am not sure—I know he paid me.

Q. Where did Alexander T. Ellis pay you?

(Deposition of Patrick H. Downs.)

A. I think he was in the shop too with Coleman, if I remember. I know he paid me.

Q. I mean you let them get away from the land office, did you?

A. If I remember right, they said they were going over to the shop and I could call over there and they would pay me.

Q. Did Mr. Eagleson and his wife pay you there? George G. Eagleson.

A. I think they did.

Q. You wouldn't be sure?

A. I don't remember. I know they paid me. It was on the street probably, down in front, or up at the Capital State Bank, up around there.

Q. Mrs. Scully didn't pay you the day she filed, did she? A. I don't remember.

Q. Her daughter met you on the street and paid you some time after that, didn't she?

A. I think so, yes.

[Deposition of John J. Blake, on Behalf of the Defendants.]

JOHN J. BLAKE, produced as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. BUNDY.)

Q. Mr. Blake, you are an attorney at law?

A. Yes.

Q. Residing at this city? A. Yes, sir.

Q. You have lived here how long?

(Deposition of John J. Blake.)

A. Fourteen years.

Q. Did you know Ex-Governor Steunenberg in his lifetime? A. Yes, sir.

Q. Did you do some law business for him during the year 1903, along about that time?

A. Yes, sir.

Q. Were you consulted by him and advised with him with reference to the location of scrip in township 6 north of range 4 east, in this Boise County?

A. Yes, sir.

Q. Do you recall the time of the line-up when these lands were entered by a lot of timber and stone entrymen, on September 14, 1903?

A. Yes, sir.

Q. How long prior to the date of that line-up on that date was it that you had this consultation and conversation with Governor Steunenberg with reference to scripping that land, that town?

A. To the best of my remembrance now, it was probably twenty or thirty days prior to that time, when I had the first interview with him regarding the matter. I had a number of interviews after that time and up to the Saturday prior to the time this land was opened to entry under the Timber and Stone Act.

Q. That would be up till the Saturday, the 12th, the day the State made its selection?

A. The 14th, Sunday, I think, Saturday at least.

Q. State what steps were taken and what was done by the Governor and you with reference to placing scrip on that town?

(Deposition of John J. Blake.)

A. Governor Steunenberg told me—I had scripped some lands before that time under his direction, as I remember—at least I did scrip after that time some other lands under his direction. When he came to me regarding the lands in what is known as 6-4, he said that they would be opened for entry on the 14th of September, but, of course, under the law, the State had sixty days, as I remember it, in which to make their selections, if the State desired to make any selections.

Q. The State's right, sixty days, would commence July 15th.

A. Yes, the right of the State commencing on July 15th, expiring on the 13th, I believe, of September, 1903. He said he didn't know whether the State was going to select any lands or not, and on that account could not furnish me the description which he desired to have me file on under the lieu land law, and as I remember, the State didn't make its selections until very nearly the expiration of the sixty days. He said he desired very much to have all of the land which would be opened and desirable to be selected by scripping it, what was known as scripping it, and wanted to know if it could be done, and safely done, and I told him that there wouldn't be any difficulty about the scrip part of it, that the only difficulty would be that when the opening came, if we filed an application for lieu selection, that if anybody got to the land office before we did and filed on any part of the land included in our application, that our entire application would be rejected by the

(Deposition of John J. Blake.)

register and receiver, even though there was only a conflict of forty acres, and that would necessitate us either filing a waiver or making a new application. We discussed this question a great many times, myself and Governor Steunenberg, and at one time I suggested to him that it might be possible to get our application ready and mail it on Sunday, or the day before the opening, whatever day that was, to the land office officials, and they would receive it on the morning of the opening, and they might file it; then again we came to the conclusion that if people were lined up there, that the land officials would probably open the doors and receive them as they came, and that we would be unable to make our selection by mailing it to the land officials.

Q. Do you know in whose name the scrip you proposed to place was?

A. As I remember, Sumner G. Moon, or S. G. Moon, I think S. G. Moon.

Q. Do you recall of Governor Steunenberg taking the matter up with Mr. Moon at your suggestion in any way, and when?

A. Governor Steunenberg—when the scrip was turned over to me it was in the name of Sumner G. Moon, and, as I remember it, Mr. Moon hadn't given Governor Steunenberg power of attorney to act for him in laying the scrip, and I suggested that he get such power of attorney, and after I had made that suggestion to him I told him that it would probably be better to have the power executed in duplicate, for the reason that I desired to file one of them with

(Deposition of John J. Blake.)

the recorder of Boise County, and that if I did so it might not be returned to us in time to be used in making the application for the selection of the lieu lands, and Governor Steunenberg, acting upon that suggestion, either wrote or wired Mr. Moon, and, as I remember it, the powers of attorney came in duplicate.

Q. Was that scrip used in 6-4? I mean at that time? A. It was not at that time, no.

Q. Can you state why you were not able to use it?

A. It was not used simply because we came to the conclusion that it would be impossible for us to successfully make the selection, because of the fact that some entrymen would get in there and select some of the land we were going to apply for.

Q. In fact, there was a big lot of them standing there the morning it was opened?

A. Yes.

Cross-examination.

(By Mr. GORDON.)

Q. Did you have a list of the land that you desired to file scrip on?

A. As I stated, Governor Steunenberg told me that he was unable to furnish me with a list. That was the first thing I asked for, and he told me that he was unable to furnish me with that at that time, that the State had not made its selections, and he did not know what lands they would select.

Q. Did he give you a list of the lands you were to file scrip on?

(Deposition of John J. Blake.)

A. Not that I remember of, because, the State, as I remember it now, did not file until very nearly the expiration of the sixty days, and I don't remember whether he got a description of it or not. He stated however, that as soon as the State did make its selection that he would furnish me with a description of the lands, if any were desirable, that he wanted to have filed on.

Q. You didn't know the lands that the State was going to select then until they actually selected them? A. No.

Q. And you just knew that you were going to have so many acres of scrip or so many quarters of scrip, or what did you know you were going to have?

A. Of course, he had a certain amount of scrip, a certain number of acres; I don't remember now what the amount was, but he told me to be ready to act in the matter and have everything ready as far as possible, and, as I remember it now, I think I prepared forms of application and affidavit.

Q. When did you give up the idea of scripping 6-4?

A. I think not until perhaps two or three days before the opening.

Q. Whom did you tell that you were going to scrip?

A. I talked with nobody that I remember of now, except Governor Steunenberg. I think he was the only one that I remember of, except possibly there might have been a locator that I might have talked with, it might have been Mr. Lake, or a cruiser.

(Deposition of John J. Blake.)

Q. Who was the cruiser?

A. I wouldn't be sure about that, but if I talked with anybody it probably was Mr. Lake.

Q. Do you know who the cruiser was?

A. My remembrance is that it was Mr. Lake.

Q. And did you understand that Mr. Steunenberg wanted to scrip this in the interest of the Barber Lumber Company?

A. I didn't have any understanding regarding that, but I supposed that perhaps that was what he was doing.

Q. You, I understood you to say, were practicing law at that time? A. Yes, sir.

Q. Were you practicing alone or were you in partnership with some one?

A. I was practicing alone.

Q. With whom did you have offices at that time?

A. I had offices with William E. Borah.

Q. And he was the attorney for the Barber Lumber Company at that time, was he not?

A. In 1903 I think perhaps he was. I wouldn't be sure about that.

Q. Did you talk with Mr. Borah about this matter?

A. Not that I know of. I never talked with him regarding scrip matters at all, because I took care of that entirely myself, and he never looked into the matter of filing scrip whatever.

Q. Did this contemplation of filing scrip exist between you and Governor Steunenberg for a month or more?

(Deposition of John J. Blake.)

A. I think it must have been, as I said the first time. To the best of my remembrance it might have been twenty or thirty days prior to the 13th of September, 1903.

Q. Did he pay you a fee for your services?

A. I was paid a fee for my services.

Q. Would you mind telling how much?

A. Well, for that particular matter, I wouldn't be able to say, because I scripped other lands afterwards, and what the total amount is that I received for that I wouldn't be able to tell without referring to—

Q. I mean, approximately, can you tell?

A. I think perhaps altogether it was three or five hundred dollars, although I wouldn't be sure.

Q. Did Mr. Steunenberg pay you or did the Barber Lumber Company?

A. Mr. Steunenberg paid me.

Q. Did he pay you it all at one time?

A. No.

Q. Do you know what length of time it ran over?

A. I imagine that must have extended over a year at least.

Q. Then he didn't pay you until some time in the middle of 1904? Is that correct?

A. No, I don't think so. He might have paid me before that. There was some matters I did after.

Q. Do you remember when the last scrip was placed by you for the Barber Lumber Company or for Mr. Steunenberg?

A. No, I do not now.

(Deposition of John J. Blake.)

Q. Would you know the land that you scripped if you should see it in a plat?

A. Well, no, I don't know as I would. In a good many instances I have copies of the applications I filed, or at least lead pencil notations as to the descriptions, but I have forgotten.

Q. You are not now the attorney for the Barber Lumber Company, are you?

A. Not at the present time, except in one or two old matters, I am not.

Q. Have you ever been the attorney for the Barber Lumber Company?

A. I have—one of the attorneys.

Q. Were you ever retained by them annually, at an annual fee, as attorney?

A. Why, my partner, Mr. Cavanah, and myself were retained, but are not at the present time.

Q. How long has it been since you were retained annually?

A. The time expired I think on the first of January this year.

Q. And how long prior to that time had you been employed as attorney for the Barber Lumber Company?

A. I think a year. I wouldn't be sure, only for one year.

Q. You said the scrip you were to locate was in the name of Sumner G. Moon?

A. I am satisfied it was.

Q. Was it Northern Pacific scrip?

A. I don't think that was. There was some

(Deposition of John J. Blake.)

Northern Pacific scrip; I intended filing that, but I think prior to that time—it might have been after.

Q. Do you know what amount of scrip you contemplated filing in 6-4?

A. I have forgotten now what the amount was, but there wasn't any definite amount fixed. It was to be in such amount as there was land open and available for filing scrip on.

Q. And all that you were to do was to make the application and fill in the description of the property that they wanted scripped—is that correct?

A. I prepared the application, the non-mineral affidavit, the notices, and I also gave written instructions to the cruiser as to the posting of the notices.

Q. Have you any letter-press copies of the instructions which you would give to the cruiser?

A. I don't think I have. I may have some of them.

Q. Do you know how many forties or quarter sections you gave to the cruiser to cruise?

A. All together?

Q. Yes.

A. No, I haven't any remembrance of that.

Q. I mean in 6-4?

A. No, I didn't give any instructions prior to this time, prior to that opening to a cruiser, because we didn't file any application.

Q. Where did you get the description of the piece of land that you wanted him to file a notice on?

A. I got that from Governor Steunenberg. He

(Deposition of John J. Blake.)

was furnishing me with that information.

Q. As I understand, you couldn't take a plat and point that out, could you?

A. I don't think I could, because I never carried in my memory the descriptions. Of course, we hadn't decided on any particular description prior to the opening because we didn't know, but we did file some scrip on that land there after that, on 6-4. Some data with reference to that I have.

Q. It never suggested itself to you that you could put a man in line on Friday or Saturday so that you could file all this scrip?

A. Yes, that was suggested.

Q. Why didn't you do it?

A. Well, as I stated, we didn't get this description of the State's filings.

Q. You could have got that Saturday afternoon, couldn't you?

A. We probably could. I don't know but what that was gotten, but I prepared no application, except a blank for the filling in of the descriptions.

Q. Then nobody could have known that you contemplated filing scrip without either Governor Steunenberg or Mr. Lake had told them, as I understand?

A. No, sir, I don't remember talking to anybody else. It certainly wasn't my policy to talk with anybody else regarding matters of that kind.

Q. It wouldn't have been likely that you would go out and tell somebody that you were going to file scrip when you thought somebody might get in

(Deposition of John J. Blake.)

ahead of you anyhow?

A. No, I don't think I would have done that.

(Witness excused.)

State of Idaho,

County of Ada,—ss.

I, John T. Morgan, Special Examiner appointed by the Court to take evidence in the city of Boise in the above-entitled action, do hereby certify that the witnesses named in the foregoing transcript, consisting of pages 3474 to 3542, inclusive, attended before me, and that each of such witnesses were duly sworn to testify to the truth, the whole truth, and nothing but the truth, and in response to oral interrogatories testified as more fully appears from the foregoing transcript, which transcript, together with the exhibits therein referred to, contains all of the evidence so taken before me on behalf of the defendants, and all of the stipulations made, and objections and other proceedings had and taken before me on the trial of said cause, while taking such evidence.

Dated June 19th, 1909.

Special Examiner.

*In the Circuit Court of the United States for the
District of Idaho.*

THE UNITED STATES OF AMERICA,

Complainant,

vs.

THE BARBER LUMBER COMPANY and
Others,

Defendants.

Met pursuant to notice at Buffalo, New York, May
7th, 1909.

Mr. Peyton Gordon, being present on behalf of the
complainants, and Mr. Joseph G. Dudley present on
behalf of the defendant, The Barber Lumber Com-
pany.

It is stipulated by and between counsel for the re-
spective parties that John J. Sly, a Notary Public,
shall swear the witnesses with the same force and
effect as though they were sworn by the commis-
sioner appointed by the Court.

**[Deposition of Dr. John Watson, on Behalf of the
Defendants.]**

Dr. JOHN WATSON, called on behalf of the de-
fense, being duly sworn, testified as follows:

Direct Examination.

(By Mr. DUDLEY.)

Q. Dr. Watson, where do you reside?

A. Toronto, Canada.

Q. What is your house address?

A. 829 College Street.

(Deposition of Dr. John Watson.)

Q. How old are you? A. 48.

Q. What is your business or profession?

A. Practicing medicine.

Q. How long have you lived in Toronto?

A. For the last four years; almost five.

Q. During that time have you practiced your profession in Toronto? A. Yes.

Q. When were you admitted to the practice of medicine? A. 1891.

Q. Where were you educated?

A. Toronto University.

Q. And you are a graduate of that medical department? A. Yes, sir.

Q. When did you graduate? A. 1891.

Q. Have you practiced elsewhere than Toronto?

A. Yes; I was at Unionville, Ontario.

Q. For how long? A. 13 years.

Q. Engaged in the practice of medicine there?

A. Yes, sir.

Q. What has been your practice?

A. General medicine.

Q. General practice of medicine?

A. Yes, sir.

Q. Do you know Albert E. Palmer?

A. Yes.

Q. Where and when did you first meet him?

A. I met him at his house in June last year, 1908.

Q. What is his house number?

A. 179 Ossington Avenue.

Q. Toronto, Ontario? A. Yes, sir.

Q. Were you called to attend him?

(Deposition of Dr. John Watson.)

A. That was when I was called to attend him. I probably saw him before that in April when I was called to attend his wife.

Q. This was in June?

A. This was in June that I have definite knowledge of meeting him.

Q. When did you last see Mr. Palmer?

A. About the 15th of April, I think.

Q. 1909? A. 1909, yes.

Q. Where is Mr. Palmer now?

A. In the Homewood Sanitarium at Guelph.

Q. Guelph, Ontario? A. Yes, sir.

Q. That is a private sanitarium for the treatment of nervous diseases? A. Yes,

Q. They have an insane asylum in connection with it? A. Yes.

Q. Did you see Mr. Palmer there at Guelph?

A. Yes.

Q. Did you accompany him from the city of Toronto? A. Yes, I did.

Q. To Guelph? A. I did.

Q. For what purpose?

A. To be sure that he would be properly admitted and that there would be no doubt about his reaching his destination.

Q. Did you see him taken into the care of asylum people there? A. Yes.

Q. He was committed regularly to that sanitarium? A. Yes.

Q. And is he now there confined?

A. He was. To the best of my knowledge he is

(Deposition of Dr. John Watson.)

there; that is where I left him. I expect he is there.

Q. Well, you have heard since that he was there?

A. Yes, I just heard the other day.

Q. Is he confined under lock and key?

A. He was when I was there.

Q. State Mr. Palmer's condition when you were called to see him in June of last year.

A. In the order of sequence, you mean? It doesn't make any difference, I suppose, as long as you get the particulars. I was called to see him. He was dressed at the time and he was very much intoxicated pretty much every day, and there was apparently a little trouble between him and his family; he was a little quarrelsome and a little I suppose domineering and they asked me to go up and see him. That he was acting strange, and had been for some time and she didn't know what was going wrong with him. So I watched him and looked at him carefully. Of course the first that attracted my attention was the expression in his eyes, which I noticed was that peculiar expression which gave me a line at once that he was in an insane condition. Then next I noticed was his inability to talk—at least to express himself; his speech was a sort of stammer or as though his mouth was a little full. It was somewhat spasmodic. He would only express himself for a little bit, maybe for a sentence or two, and then he would have to stop and collect himself. He had also a point that we generally examine in connection with, what we call an exaggerated reflex, patella reflex. I am giving the symptoms, because

(Deposition of Dr. John Watson.)

the impression I got I followed out along that line. I saw by his actions that he was restless, he would not sit down any length of time; he would walk backwards in the room, very restless.

Q. What about his ability to read and write?

A. Well, I tested him on the writing, and he could not sign his own name.

Q. How about his reading?

A. Well, he didn't read at all. He said he couldn't read, couldn't understand. He said then that probably large head lines, the large type he could make out the letters, but beyond that he could not do anything. Of course he thought there was something wrong with his eyesight and he complained of having sensation on the left side of his head, made it somewhat general, over the neighborhood of the ear; he claimed that he was treated at one time by a physician for some trouble in his ear, he had it syringed and attended to and he thought if he would treat him along that line it would do him a lot of good. He thought his old trouble principally was in this neighborhood. He felt that his mind was not just what it should be, but he laid it on to this area, and due to his ear. He thought if that was treated he would be better.

Q. Was he under your care from that time on?

A. Yes. I might say that then he became careless in his habits; that is, he was filthy in his habits.

Mr. GORDON.—Before you proceed, I would like to have the record show an objection to all this testimony as to the condition of Mr. Palmer on the

(Deposition of Dr. John Watson.)

ground it is incompetent, irrelevant and immaterial.

A. (Continuing.) For instance, he would move his bowels wherever he was taken, on the floor or anywhere, and pass his urine in the same way.

Q. He has been under your care, has he, from that time down to April?

A. I attended him fairly regularly for two or three weeks until I made up my mind as to the condition; I tried to get him to take some medicine; I couldn't do that very well, because he wouldn't take it himself and he had nobody with him that I could trust or that would carry out my instructions in that respect. I then told his wife what I thought was the condition and I told her the quicker that he was removed to a place of restraint, might be to a hospital if they would take him, if not, to an asylum, because the longer he stayed there, likely the worse it would be for him, for his mental condition. Well, then his brother came over and I told his brother what I thought was the trouble, the condition, and what I advised them to do. So when I went away for my holidays I had made arrangement to get him to a hospital provided he was quiet and did not require very much care. The practitioner who took my work while I was away, had everything arranged; they even had a cab come to the house one day to take him over to the Western Hospital. They have a few rooms there in which they have doors that have no glass or anything in them, and I was going to have him put in there for a little while; but he refused to go, and he refused to go anywhere

(Deposition of Dr. John Watson.)

of his own accord, so that then I paid little or no attention to him after that, except when he would drop in occasionally, because unless he was confined where he had proper attention I did not think there was any use of my making visits and running a bill or any expense on him, so that for several months I saw him occasionally, but did not do anything in regard to treatment for him until shortly before he went away.

Q. Well, now, what did you do shortly before he went away?

A. Well, he became at last so troublesome that he would come down to my office probably as often as ten or fifteen times a day.

Q. How far was your office from his house?

A. Oh, about a hundred yards. He would go into the bank, as the bank cashier told me—

Mr. GORDON.—Do not tell that.

Q. You need not give that.

A. All right. My wife at last was getting a little alarmed; she was afraid that probably he might do something to her, and she told me that she wished I would make some arrangement; so I told his wife that she would have to do something; I said, "The best thing you can do is to commit him to the asylum." Well, she did not like to do that. Well, I said, "Get a neighbor then to do it. Do something. Have somebody do it." Well, she did not do that, and I had made up my mind that I would do it myself, although I did not want to. Just at that juncture, I got a letter from his brother asking

(Deposition of Dr. John Watson.)

me what I thought of Homewood Sanitarium for such a patient as Albert. I told him I thought it was a splendid place, probably just as good, maybe better, than the ordinary asylum, because it is more home-like and a beautiful location, and it is not classed as an asylum, people have a little more respect; doesn't sound as bad as an asylum. So when I got that letter I then thought I would try and manage without taking any steps myself until I got something definite from his brother. I wrote his brother immediately that I thought the institution was all that could be desired, and as soon as possible I got word from his brother stating if I thought so if it didn't go beyond a certain rate, to commit him, to have him placed there and to draw on him for his maintenance. So I was so anxious to have him placed in some place, that although his brother is a complete stranger to me, I put every confidence in him and I run the risk of at least taking him up and told them that I would at least see that he was paid for for a week until I could hear definitely from his brother as to the financial part of it. He talked a little bit about going and I thought probably when it came down to the act of going that he might refuse the same as he did to the hospital, and I told him, "Now, we are going to take you to Guelph," and he wanted to know who was committing him, his wife or brother.

Q. That isn't important. As a result of this, you yourself took him to Guelph? A. Yes.

Q. And did you have him examined by some

(Deposition of Dr. John Watson.)

other physician than yourself?

A. Oh, yes; they require the examination too, and two papers filled out.

Q. Two papers for commitments?

A. Yes, same as they do admitting to the provincial asylum.

Q. And you made out doctor's commitment papers, and who else, what other physician?

A. Dr. Page.

Q. What is his name?

A. Thomas J. Page.

Q. Who is Dr. Thomas Page; does he live in Toronto? A. Yes.

Q. A practicing physician? A. Yes.

Q. And he made an examination, did he, of him?

A. Yes. He was the doctor who saw him when I was away for the holidays last summer and visited him.

Q. And these papers were made out and you took Albert, did you, to Guelph? A. Yes.

Q. And saw him placed in confinement?

A. Yes.

Q. From your examination of Mr. Palmer while acting as his attending physician, what was his condition of mind, sane or insane?

A. Insane.

Q. And was he insane at the time that you first saw him in June of last year? A. Yes.

Q. What do you say with reference to whether there is or is not any prospects of his recovery?

A. I do not think there is any chance of his re-

(Deposition of Dr. John Watson.)

covery.

Q. What disease of the mind do you think he is suffering from?

A. A term called general paresis.

Q. Did you or did you not meet a Mr. P. J. Cosgrove, his uncle? A. Yes, I met him.

Q. Sometime this last year, 1908?

A. Yes, 1908.

Q. In Toronto? A. Yes.

Q. He was there to see Palmer?

A. Yes.

Q. And you talked with him in reference to Palmer, did you? A. Oh, yes.

Q. Saw him at his house, at Palmer's house?

A. Yes.

Q. What does Mr. Palmer's family consist of, how many children? A. Three.

Q. And a wife? A. Yes, sir.

Q. I think that is all. You may ask.

Cross-examination.

(By Mr. GORDON.)

Q. Doctor, I understood you to say you were engaged in the general practice of medicine?

A. Yes.

Q. You make no specialty, as I understand it?

A. No, not particularly.

Q. You are not a specialist in mental or nervous diseases, are you? A. No, not so-called.

Q. You are not an alienist or an expert on those diseases, are you?

A. Not according to the term, I suppose.

(Deposition of Dr. John Watson.)

Q. You have never testified in court as an expert on mental or nervous diseases, or in insanity cases, have you? A. Yes, I testified once.

Q. As an expert?

A. As an expert—well, depends on what you call expert evidence. I was in court in connection with a patient I had, in connection with a will.

Q. Well, a layman can testify as to acts and as to such things, as to their opinion of whether people are insane or whether they think so. But did you qualify as an expert? A. No.

Q. You say you subjected Mr. Palmer to one test to determine whether or not he was insane; that was the patella reflex? A. Yes.

Q. That is the way you strike the knee and the foot will fly up, if you think the man is insane, and if you don't think he is insane, he has some control over it; is that it?

A. No. Well, it may or may not be. That may occur in organic trouble too.

Q. Well, then, from that did you conclude that he was insane? A. Oh, no; oh, no.

Q. You say that he was continuously drinking intoxicants during the period that you saw him in June of last year?

A. Yes, he was drinking a good deal.

Q. And that he had some difficulty in talking?

A. Yes.

Q. Wouldn't that same defect in the speech occur in many instances of excessive alcoholism or drunkenness, as you call it, from which a man would

(Deposition of Dr. John Watson.)

naturally recover the next day or day or two afterwards when he ceased his excessive drinking?

A. No, I don't think so. This would be different than that.

Q. If I should show you a letter written by Mr. Palmer within the last month or six weeks that was very legible, the language expressive, and couched in a coherent and intelligent form, the context of the letter, being a request to one of his friends for a loan of \$200, would you change your opinion as to his sanity or insanity? A. No.

Q. Then Mr. Palmer's condition is such at the present time that you think he might be capable of writing an intelligent or coherent letter, or at times talking coherently and intelligibly? A. Yes.

Q. And you would think in doing that he would know what he was talking about?

A. Yes, he would know what he was talking about.

Q. In other words, at some of these times that you talked with him he understood what you were saying, even in the last one or two months?

A. Yes.

Q. And when you told him that you were going to take him away, and he wanted to know whether it was at the instance of his wife or his brother, you took that to mean that he did not want to be put away by his wife, but that if his brother was taking care of him he was perfectly willing to go; isn't that your idea of what he was intending?

A. Yes.

(Deposition of Dr. John Watson.)

Q. In other words, he and his wife had had some considerable difficulty and they did not get along very well together, and he felt that his brother was his main support and he would do practically what his brother told him to do; isn't that correct?

A. Well, he said that he would do that.

Q. He knew where he was taken?

A. Yes, he knew where he was taken.

Q. Now, did you give him any medicine at all?

A. Yes, I did at first for a while, but he didn't take very much.

Q. What did you give him that for; to cure him of the natural nervousness that would occur from excessive drink?

A. No, not particularly. I gave him a pill that they use largely over there in the Provincial Asylum.

Q. Was that strychnine and nux vomica?

A. Arsenic, quinine—

Q. And what else?

A. What is this other—particularly a nerve sedative; it slips my memory now.

Q. Asafetida? A. No.

Q. Nux vomica?

A. There was nux vomica and quinine—

Q. Digitalis?

A. No, that isn't it. I cannot think of it.

Q. Well, it was just a nerve tonic that you give to almost any person?

A. Yes. I have given to other patients, but not so often, not very often.

Q. I mean for a nervous break-down you give it

(Deposition of Dr. John Watson.)

to people? A. Yes, good for anyone.

Q. Not necessarily insane people, either?

A. No.

Q. Had you ever taken him to any sanitarium before?
A. No.

Q. Had he ever been in a sanitarium before, to your knowledge?

A. Not to my knowledge.

Q. Did you treat him for alcoholism?

A. No.

Q. Did you stop him drinking alcohol or liquor?

A. I don't know that I did. I told him to quit it.

Q. What was he drinking; whisky?

A. I think so.

Q. Do you know how much of it he drank a day?

A. No.

Q. All he could get, I assume?

A. I don't know anything about that.

Q. Now, this sanitarium to which you did take Mr. Palmer, is that a private sanitarium?

A. Yes, it is private.

Q. And it isn't a sanitarium where they commit the criminal insane for that jurisdiction, is it?

A. No.

Q. Nor it isn't the asylum or the institution to which the authorities commit their insane, is it?

A. No.

Q. They have an asylum in that community where people who live in the community where Mr. Palmer did, who become insane and become violent,

(Deposition of Dr. John Watson.)

when the authorities commit them to an institution, and that is a different one from the one in which Mr. Palmer is; is that correct? A. Yes.

Q. As a matter of fact, you could not have taken Mr. Palmer there and compelled him to have remained at that institution without he had expressed a desire to go, could you?

A. Which institution?

Q. The one at which he is now.

A. Oh, yes, I could take him.

Q. How could you have got him there?

A. Well, have him brought before a magistrate and commit him as a lunatic.

Q. But then the magistrate would have committed him to one of the institutions for that place, wouldn't they?

A. Well, I don't know as that would be—No, I do not know that that would be absolutely necessary, either, as long as he was committed to a place of safety. Of course, in a pauper case when there are no funds forthcoming, of course, he would have to go to the Provincial, but where they are able to pay and want something of a little more private nature, they do not object to their going there.

Q. What I am trying to find out is, whether or not as a matter of fact you can, without any formality of the law, take a person to this sanitarium at which Palmer is, and compel him to stay there?

A. No, you couldn't compel him to stay there without the formality of law.

Q. This is a pay sanitarium. They do not take

(Deposition of Dr. John Watson.)

people there without they pay their expenses?

A. No.

Q. And I understood his uncle or his brother was paying for his treatment there?

A. His brother, yes. Of course, that is why he went there. If I hadn't had that, of course, I would have put him in the Provincial.

Q. You mean you would have tried to put him there?

A. I would have had him committed, and that is where they would have put him, or else in the jail.

Q. Now, when he came to see you, did he show any signs of violence?

A. No, he didn't show any signs of violence.

Q. Didn't threaten you in any way?

A. Oh, no.

Q. Didn't talk threatening to you, did he?

A. Regarding myself, do you mean?

Q. Yes. A. No.

Q. Your wife became nervous just because he was a man—well, I won't ask that, because you do not know why your wife became nervous; but she did not want him to come there because he had come as you said so many times, and so she became exercised over that. Did he make any threats towards anybody else? A. No, not particularly.

Q. Did you see him at any time act violently towards anybody?

A. No. All I saw was when I would be in his house. I did not see him of course, raise his hand or do anything, but when his wife said anything that

(Deposition of Dr. John Watson.)

he didn't like, or something like that, of course he would get up and look cross and struck an attitude that it is hard to say what he might do.

Q. You don't know whether that attitude was justified even for an insane man?

A. Oh, no. I didn't see him show any signs beyond that.

Q. Did you see him perform these operations of the bowels or urinating on the floor yourself, or who told you of that? A. I was told of that.

Q. He did not do that before you? A. No.

Q. And isn't that a common occurrence for men who get exceedingly drunk to do such things as that?

A. Possibly. I don't know.

Q. You have known of men who would get drunk and go in a room and stay a week or so and relieve themselves right in the room and live in the filthy state, and after the drunk was over, lead decent, cleanly lives thereafter?

A. Well, no, I don't think I ever saw a case like that.

Q. Now, you have used the expression of committing to the institution; you mean that you took him there without any legal formality and that they agreed to accept him as a patient? A. Yes.

Q. There wasn't any necessity of putting him in the room and locking him in there, was there?

A. Yes, I think so.

Q. Well, what was the necessity; that he would go out and get drunk again?

A. No. Not that. But he was in such a state of

(Deposition of Dr. John Watson.)

mind that he wouldn't know what he might do. Might wander away or something like that; something happen him, or something of that nature; that is the reason.

Q. Well, did they put him in a room and lock the door?

A. Yes, they locked the door. They have a door from the main entrance into a corridor in which there are, I think, four or five cells down each side, I mean rooms, nicely fixed up.

Q. Like a hospital?

A. Yes. Then off of that was the great big balcony with iron bars up, and then there was on the other side right at the end was the balcony to this side of it, and there was a room where they played pool, had pool-tables and things like that; general sitting room.

Q. Was he allowed access to the pool room?

A. Yes, he was playing pool when I left.

Q. Playing by himself?

A. Oh, no; he was playing with another party.

Q. Shoot a pretty good game?

A. Yes, he was doing very well.

Q. Had one of the other inmates in there playing with him?

A. I rather expected it was an inmate, yes.

Q. And there were others in the same room with him?

A. Yes.

Q. How many?

A. Well, there was four others that I noticed.

Q. You don't know whether they locked the door

(Deposition of Dr. John Watson.)

to keep him in, or the others?

A. Well, I know what the nurse told me. I heard the instructions from the doctor. I asked them about that particularly; I wanted to know what privileges he would have. They said, "He is not let out of this room except the nurse is with him." It was a male nurse. And they told me, "We keep him here under this lock and key until he is here long enough, until we are satisfied as to his condition, whether we will allow him any other privileges or not." There were two in there; one fellow was wandering around talking away to himself in a most decidedly melancholy way. He was a young looking fellow.

Q. You bade him goodbye when you left him?

A. Yes, sir.

Q. And he bade you goodbye and wished you good luck?

A. Yes.

Q. Shook hands with you?

A. Yes.

Q. Told you to come and see him?

A. Yes.

Q. And you told him you would come?

A. Yes.

Redirect Examination.

(By Mr. DUDLEY.)

Q. Doctor, what do you say about his drinking, do you know whether or not he stopped drinking?

A. My own opinion was that he had stopped entirely.

Q. Did this condition still continue—incoherent speech and inability to write—for some time?

A. Well, the inability to write had improved a

(Deposition of Dr. John Watson.)

little bit from what it was first.

Q. So that he was able to write letters?

A. Oh, yes.

Q. Did he write a good many letters?

A. He was all the time writing, wanting to write.

Q. Did he speak more coherently during the latter part of 1908 than he did in June?

A. Yes, better.

Q. Is Dr. Page connected in any way with any hospital in Toronto? A. Yes.

Q. Which one? A. Western Hospital.

Q. Do you know whether he has had any experience in mental diseases?

A. Well, about the same I suppose as the ordinary general practitioner. I was in the country and then I generally committed on the average of one a year.

Mr. GORDON.—They were people anybody could tell was crazy?

The WITNESS.—No, I don't think they could. You may take any person that may be decidedly crazy, and you drop in and talk and sometimes you won't know there was anything the matter with them.

Q. So that you have seen a number of cases of mental trouble? A. Oh, yes.

Q. Insane people, during your practice?

A. Yes. I committed either 11 or 12 when I was out in the country; almost one a year, I know.

Q. Did you have any hospital experience in connection with your medical work?

A. Not any more than just the clinical.

(Deposition of Dr. John Watson.)

Q. That is what I mean. A. Yes.

Q. Now, something has been said about whether he talked threateningly. Did he at any time talk threateningly?

A. Well, he did in this way: He came into my office a few days before he left. He had a stick about that long, about two feet long, a piece of a board that he had stuffed down in his waistcoat, and he showed me, he says, "They are killing me up at the house; they hit me over the head with this stick." He says, "My wife isn't safe there." Well, I said, "Albert, you are standing the racket pretty well; I don't see any signs of cracks."

Q. That is all.

Recross-examination.

(By Mr. GORDON.)

Q. You did not make any investigation to see whether his wife had been beating him over the head with that stick?

A. Well, there was no evidence of it. She must have struck very mildly.

Q. You say that the form of his malady is general paresis? A. That is my diagnosis.

Q. He walks all right, doesn't he?

A. He walks fairly well, yes.

Q. And he can use his arms? A. Oh, yes.

Q. Well, what is general paresis?

A. Well, they use the term paresis in distinction from paralysis, because paralysis you always associate with inability to use muscles; but general paresis means partial—tendency towards paralysis.

(Deposition of Dr. John Watson.)

In general paresis, that is one of the points, it is like every other disease, it may come on somewhat acute and then they may have a remission—in fact our best authorities say that the remission may be so that even the attending physician is led to believe that they are fully recovered, and then it will break out again.

Q. Well, every man that gets drunk so that he cannot walk, there is evidence there present of paresis, isn't there? A. Yes, that is all right.

Q. Drunkenness, staggering drunkenness is a form of paresis, isn't it?

A. It would be a paretic condition.

Q. A partial paralyzed condition? A. Yes.

Q. Paresis, is that necessarily a brain disease?

A. Yes.

Q. Then these people that get what they call slow paresis, where they have trouble getting up and a little unsteady on the feet as though the ankles are weak, what they call insipient paresis, is that a brain disease? A. Brain or spinal.

Q. And then when a prize-fighter hits another one on the point of the jaw and he falls in a heap, he has paralyzed him to a certain extent, that is a form of paresis that that man suffers for the time being?

A. I don't know as you would call it paresis. That is shock.

Q. Well, it is a paralysis of the muscles caused by an action on the brain, isn't it, for the time being?

A. Yes, that is right.

Q. That is all.

Deposition closed.

JOHN WATSON.

*In the Circuit Court of the United States for the
District of Idaho.*

THE UNITED STATES OF AMERICA,

Complainant,

vs.

THE BARBER LUMBER COMPANY and Others,
Defendants.

United States of America,

County of Erie,

State of New York,—ss.

I, John J. Sly, a Notary Public in and for the County of Erie and State of New York, do hereby certify that pursuant to the stipulation entered into between counsel for the respective parties herein, on the date indicated in the foregoing deposition, I was attended by Mr. Peyton Gordon, counsel on behalf of complainant, and Mr. Joseph G. Dudlev, counsel on behalf of defendant *The Barber Lumber*, and by the witness Dr. John Watson; that said witness was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the above-entitled cause, after which, by consent of counsel for the respective parties, his deposition was taken by me stenographically and reduced to typewriting, and thereafter read over to said witness and signed by him in my presence.

I do further certify that I am not of counsel or attorney for either of the parties, nor in any wise

interested in the event of the cause named in said caption.

In witness whereof, I have hereunto subscribed my name and set my seal this 8th day of May, in the year of our Lord, one thousand nine hundred and nine.

[Seal] JOHN J. SLY,
Notary Public in and for Erie County, New York.

Filed May 21, 1909. A. L. Richardson, Clerk.

*In the United States Circuit Court, District of
Idaho.*

UNITED STATES OF AMERICA,
Complainant,

vs.

BARBER LUMBER COMPANY et al.,
Defendants.

It is hereby stipulated by and between counsel for the representative parties that the deposition of John I. Wells, John Kinkaid and L. M. Pritchard may be taken at the instance of and in behalf of the defendant, Barber Lumber Company, before Cora E. Montgomery, at the city of Los Angeles, California, on this 2d day of April, 1909, and from time to time thereafter until such deposition shall be completed without other or further notice, and that such depositions when taken may be filed and used in the above-entitled action with the same force and effect as though the same were taken on notice and before an examiner duly appointed by said Court appearances for complainant, Payton Gordon and Charles A. Keigwin; for defendant, Barber Lumber Company, C. T. Bundy.

Thereupon the defendant called as a witness JOHN I. WELLS, who, being first duly sworn, testified as follows:

[Deposition of John I. Wells, on Behalf of the Defendants.]

Mr. Keigwin, counsel for the complainants, observing the presence in the room, Mr. John Kinkaid and Mr. L. M. Pritchard, together with Mr. Wells, the witness sworn for examination, object at the presence of the other two gentlemen whom Mr. Bundy has expressed a purpose to examine as witnesses, and request that the said witnesses not under examination withdraw from the room in accordance with the rule on the subject heretofore laid upon all witnesses in this case.

Mr. Bundy, the defendant, objects to the gentlemen leaving the room for the reason that no such rule has been made in this case, pertaining to the witnesses of defendant, and for the further reason that counsel for defendant will be unable to conduct the examination of John I. Wells without the assistance of the parties named, and for the further reason that Mr. John L. Kinkaid, are parties defendant to this suit.

Mr. KEIGWIN.—Before the commencement of the examination of the witnesses, John I. Wells, counsel for the complainant, objects to the examination of the said person as a said witness in this cause upon the ground that he has been present during the examination of most of the witnesses for the complainants in violation of the rule upon that subject,

(Deposition of John I. Wells.)

and is thereby rendered incompetent as a witness in this cause.

(Mr. BUNDY.)

Q. Mr. Wells, during examination of complainants' witness at Boise, you attended court a good portion of the time, did you not? A. Yes.

Q. At that time had you been advised as a witness? A. No, sir.

Q. Had you learned of the fact that you would be called upon to testify in this case until your departure for Boise from this city? A. No, sir.

Q. When was it that you learned?

A. It was Monday, the 26th of March, and then I guessed that that was what it was for. Got a telegram from Mr. Kinkaid to come to Reno. I guessed that was what it was for.

Q. When were you first actually told or requested to appear as a witness?

A. March 30th, I believe.

Q. Mr. Wells, where do you live?

A. Boise, Idaho.

Q. How long have you lived there?

A. Since the spring of 1902.

Q. Where did you live before that?

A. Centerville, Boise County, Idaho.

Q. How far is Centerville from Boise?

A. About 45 miles.

Q. How long did you live at Centerville?

A. About six years.

Q. What was your business while you resided at Centerville? A. Mining mostly.

(Deposition of John I. Wells.)

Q. Are you familiar with the section of the country in the Boise Basin and vicinity, which is timbered?

A. Yes, sir.

Q. For how many years have you been familiar with that district of land in the Boise Basin?

A. Beginning the latter part of April, 1895, I arrived in Centerville.

Q. In 1895, state if you know as to whether or not this timber, or some portion of it, was open to entry?

A. No, sir, not that I know of.

Q. Do you know as to whether or not any entries were made under the Timber and Stone Act in the Boise Basin prior to the summer of 1901?

A. None that I know of, no, sir.

Q. State if you know when the entries first began to be made in the Boise Basin.

A. In July and August, 1901.

Q. State whether or not anything occurred during the year 1901, to prompt the entering of these lands, in the way of development of the country, I mean?

A. What I learned was through the papers. We had taken them up to the mine, and there was a good deal of boosting going on for a railway during that time, and also timber cruisers arrived about that time.

Q. Do you know the names of the cruisers that arrived, and where they were from?

A. Yes, sir, I found out afterwards that it was Mr. Downs, Mr. Snow, and Harry Curtis as a surveyor, he was not a cruiser. Mr. Downs and Mr.

(Deposition of John I. Wells.)

Snow from Minneapolis, Wisconsin, and Mr. Curtis from Boise.

Q. Did you know Mr. Downs or Mr. Snow when they arrived in that country? A. I did not.

Q. Well, up to that time had you any experience in the timber and stone business? A. No, sir.

Q. Can you state who it was that was reported as about to build a railroad in the Basin?

A. Yes, sir. There was a company organized in Boise who were surveying a railroad up to the creek, and that company consisted of E. E. Garrett and James Pinney and Norman Ruick, and a surveyor by the name of Stephens and a fellow by the name of Beggs.

Q. What, if any, position did Garrett hold at that time?

A. Receiver of the land office at Boise, Idaho.

Q. Did Mr. Ruick hold any government position at that time? A. No, sir.

Q. State if that was the Mr. Ruick who afterwards served as United States District Attorney.

A. Yes, sir.

Q. State what, if any, effect the discussion of this railroad had with reference to your course of action in timber and stone matters.

A. I had been working at the Twin Sister Mine and had been working there for 18 months, and when the railroad agitation came up, I quit the mine and went to doing assessment work on claims of my own about two miles from the Twin Sister mine, and it was during that time that these parties came from

(Deposition of John I. Wells.)

the east to locate timber land. I went home every night from my work and I met these parties in Centerville at my brother's place of business.

Q. Who were the parties you refer to that you met?

A. Mr. Downs, Mr. Snow, also Mr. Manning and Mr. Curtis.

Q. State as to whether or not you made a filing on a timber or stone claim.

A. Yes, sir, I did.

Q. Can you give the date on which you filed?

A. September 10th, I think, 1901.

Q. Did anyone else file at the same time you did?

A. My wife and Homer Granger and his wife.

Q. Did you know Homer Granger?

A. Yes, sir.

Q. How long had you known him?

A. Ever since I had been in Centerville.

Q. What was his business? A. Miner.

Q. Did you afterwards make final proof on your claim? A. Yes, sir.

Q. On what date?

A. December 12th, 1901.

Q. After you had filed on this claim state as to whether or not you located other people.

A. Yes, sir, and also before I filed.

Q. Can you give the names of some of those you located?

A. Yes, sir. Arthur Anderson, Bert Nugent, Edward Able Hunter, James T. Ball and Harvey H. Wells.

(Deposition of John I. Wells.)

Q. Was this before or afterwards?

A. Before.

Q. Can you state any that you located by yourself after your location was made?

A. No, sir, not by myself.

Q. Did you, at or about the time you filed upon the land, enter into an arrangement with Patrick Downs to carry on a locating business?

A. Sometime after that, probably three or four weeks; let's see, there was a while right after that, that Mr. Snow located some people that I had got to go up to take timber, and the price of the location fee was cut between Snow, Downs and myself, and right after that Downs and I went into business together, solely together, no one else with us.

Q. What was the locating fee charged in that vicinity by you gentlemen? A. \$25.00.

Q. What charge did you make for the five you located before you filed yourself?

A. \$25.00.

Q. What do you mean by the locating fee being cut?

A. It was divided equally between the three of us.

Q. Then did Mr. Snow go back to Minneapolis at that time? A. Sometime about that time.

Q. And you and Mr. Downs formed a partnership for locating business? A. Yes, sir.

Q. Now, state how you carried on that business, what you did, and what he did.

(Deposition of John I. Wells.)

A. When I came to Boise, I stopped at the Pacific Hotel and *restled* applicants for timber lands, They were to pay the expenses up there and \$25.00 locating fee after their filing was accepted at the land office.

Q. What did Downs do?

A. He showed them the land, took them over the land, give description of the land which they brought to Boise and I assisted them with their papers and also directed them to file.

Q. State approximately, if you can, how many entrymen were located during September, October and November, 1901.

A. In the neighborhood of forty.

Q. What interest did you have in the location of these lands by these entrymen, Mr. Wells? How were you interested in getting them to file upon lands?

A. I was after my \$12.50 location fee.

Q. Did you have any other interest in the location of people at that time?

A. No, sir, I did not.

Q. Were you acting for any person in procuring them to locate on timber land, other than yourself and Mr. Downs, as locators? A. No, sir.

Q. State as to whether or not any representations were made by you or by your authority or in your presence to any person located by your firm with reference to the sale of lands when they had acquired title. A. No, sir.

Q. State as to whether or not any representations

(Deposition of John I. Wells.)

were made to any locator or entrymen as to what they could make out of the entry of lands under the Timber and Stone Act.

A. No, sir. We figured that it would be worth about 50¢ per one thousand when the State sold its selections in that vicinity. We had information by the newspapers where the State had sold timber land in Idaho at that price, 50¢ per thousand. We thought our timber was just as valuable per one thousand as the State's.

Q. At that time, during the fall of 1901, did you have any means yourself for buying large tracks of timber lands, Mr. Wells? A. No, sir.

Q. Were you acting for anybody, or under any arrangement with any person, firm or corporation, who was seeking lands from the Boise Basin at that time? A. No, sir.

Q. What, if anything, occurred at or about the time the first entrymen began to make final proof to December, 1901?

A. Well, these five, Anderson, Balls, Hunter, Wells, Nugent, Wells, a brother of mine; Nugent, I had worked with him in the same mine for 18 months and before that time he was employed by me on the Buiser mine for a period of about six months. Arthur Anderson who is an old-timer in the basin, placer mined all his life ever since the discovery of California, I believe, or something like that, I had known ever since I landed in the basin in 1895. James T. Ball was a clerk in our hotel in Centerville about three years prior to the time he filed on the

(Deposition of John I. Wells.)

land, and I was intimate with Mr. Ball for about three years. Edward E. Hunter run a livery stable, also a private hotel in Centerville, and I had known him for about four years, when the time come to make final proof these gentlemen came down two or three days before the date set for final proof, and from the time they had filed up to the time for final proof, their friends and old-timers in the basin had kicked on anyone filing on this timber land, claiming it was mineral land, and they never could get title to this land, and when they got to Boise they told me that they had just throwed their money away in coming down to file on the land and wanted to see different lawyers in Boise as to the probability as to their getting title to this land. The lawyers differed, and the boys had a good time, spent their money a good deal, and give up making proof altogether by the time the date set by the land office for them to make proof had arrived, and they had made up their minds that they would make proof. Some of them were short of money by this time, and was trying to borrow the money from the banks and also from me; and I had the money, but I did not know whether it would be just right for me to loan the money to them to make proof, as I located them, and I went to John Kinkaid, and asked his advice, and he advised me not to do it, not to let them have the money. It run on two or three days more, and finally I let them have the money. I let Mr. Nugent have \$412.50. I let Mr. Anderson have \$250.00, and they made the proof.

(Deposition of John I. Wells.)

Q. Did you let the other three named have *month* at that time? A. No, sir.

Q. Whose money was that you loaned these gentlemen to make final proof? A. My money.

Q. Well, up to that time had you arranged, or had you any conversation with any person of means who was desirous of acquiring timber in that country?

A. No, sir.

Q. Do you remember the date Mr. Anderson and Mr. Nugent made their proof?

A. Not exactly, but it was something about the 10th of December, 1901, before me and my wife made final proof.

Q. You and your wife made proof on the 12th? Did anyone else make proof at the same time you did?

A. I am not sure, but Mr. Homer Granger proved up the same day we did, or a day or two after we did.

Q. Did his wife prove up? A. No, sir.

Q. Do you know why?

A. She was sick.

Q. Now, where did you and your wife get your money with which to make your proofs?

A. Mrs. Wells made her money cooking for miners. I made mine working in the mines and interest in a saloon and locating timber.

Q. Now, up to the time that you made your final proof on December 12, 1901, had you interested or had any talk with a man by the name of Sweet?

A. I borrowed of Mr. Sweet something near a

(Deposition of John I. Wells.)

\$100.00. I think it was about \$130.00. I lacked that much to make my proof at that time, and I borrowed from Mr. Sweet as a friend.

Q. Did you afterwards pay it?

A. Yes, sir.

Q. Did he have any interest in your claim?

A. No, sir.

Q. Did you give him any security on your claim?

A. No, sir.

Q. As a matter of fact, you held your claim until 1906?

A. Yes, sir.

Q. Then sold it to whom?

A. Chapman, manager of the Barber Lumber Company.

Q. How much did they pay you for it?

A. \$1250.00.

Q. How was that payment made, Mr. Wells?

A. This was paid by check on the First National Bank of Boise.

Q. That was October, 1906?

A. Yes, sir, along that time.

Q. That was the same land you acquired by your final proof made December 12th, 1901?

A. Yes, sir.

Q. State as to whether or not, during the winter of 1901 and 1902, there was more or less discussion among the entrymen as to the proceedings which had been instituted against timber and stone entries in the State of Oregon.

A. There was a good deal of agitation in regard to land frauds in Oregon.

(Deposition of John I. Wells.)

Q. State as to whether or not in the Boise Basin they made investigation at or about that time.

A. Some time in the spring, I think, of 1902.

Q. State as to whether or not you discovered along in December or January some time in the winter of 1901 and 1902, that many of the people you had located upon land and for which you had been paid a locating fee were having trouble in raising the necessary money with which to make final proof.

A. Yes, sir; practically all of them. They came to me and said they could not raise the money and wanted to know if I could not find someone to make them a loan of that much money.

Q. Did you then try to make some arrangement with someone to loan the necessary sum to prove up with?

A. Yes, sir.

Q. With whom did you arrange, with anyone?

A. William Sweet.

Q. About what time was it that you made arrangements with Mr. Sweet?

A. Sometime right after Christmas, 1901, between that and the 10th of January, 1902.

Q. Tell what that arrangement was?

A. I spoke to Mr. Sweet something on this line: That I had located a certain number of people on timber claims up near Centerville, and told him that these people did not have the money to make proof, and that I had collected from each one \$25.00 for locating them and that they were talking about coming back onto me for what they were out, and not making proof at all, and Mr. Sweet, he says, "I'll let you

(Deposition of John I. Wells.)

know." He says, "I have got the money, but I will have to get some advice and look into the matter before I can give you an answer." He afterward came to me and asked me about the honesty of these people that had filed on timber land, and I told him as far as I knew, that they were all right, and he told me, "All right, to go ahead," and he would let them have the money through me.

Q. Now, there has been considerable evidence here as to money being furnished some of these early entrymen by you and in some instances, delivered to them by one Dean West. Whose money was this you were loaning? A. Mr. Sweet's.

Q. State how Mr. Dean West came to handle any of this money.

A. Mr. West was well liked in his neighborhood and seemed to know all these people, or the biggest portion of these people, and in fact, had made up two or three of the parties that had went and filed on timber and those that had made up the party, those included in their parties, I handed Mr. West the money to make proof with and instructed Mr. West to either get a note from them or bring me the receipt of what they got for the money as security for the money.

Q. How was Mr. West interested in the locating firm of Wells and Downs?

A. I agreed to pay Mr. West \$5.00 for getting up a load to go out and locate timber.

Q. And he would get \$5.00 for his trouble?

A. Yes, sir.

(Deposition of John I. Wells.)

Q. Was that an inducement for Mr. West?

A. I was a stranger in Boise, and it was quite an aid to me to have Mr. West make up these parties.

Q. At the time you located these people, during 1901 (confine to that for the present), did you make any representations to them or authorize any such, or were any made in your presence to such persons to the effect that the money would be furnished to them?

A. No, sir. I did not. I heard rumors that Mr. Manning, that there was a company behind him, that Mr. Manning was the party that had induced Mr. Snow and Mr. Downs to come out from Minneapolis and file on timber claims and he also hired Mr. Harry Curtis, a surveyor, to work for him in Boise Basin, as to running out locations.

Q. What became of Mr. Manning who was locating them?

A. I learned that Mr. Snow was going to throw him out of the Capitol Hotel of Boise City, if he did not do as he had agreed with him, and Mr. Manning disappeared.

Q. Did he ever return to Boise?

A. Never to my knowledge.

Q. Were you representing anybody in making these locations in 1901?

A. No, sir; no one but myself.

Q. At that time had you any talk with Mr. John Kinkaid with reference to this timber other than his own entry?

A. No, sir; no more than I went to Mr. Kinkaid

(Deposition of John I. Wells.)

for his advice, which I have testified to.

Q. Did you know or had you any talk whatever with Mr. Frank Steunenberg? A. No, sir.

Q. Well, had you any talk with Mr. William Sweet, up to the time you told us about, 1901?

A. Only for borrowing money on my own claim.

Q. Did you know John T. Barber and Sumner G. Moon? A. No, sir.

Q. Did you know A. E. Palmer?

A. No, sir.

Q. Or Horace S. Rand? A. No, sir.

Q. Did you have any talk with L. M. Pritchard with reference to this land during the year 1901?

A. No, sir; did not know him.

Q. Did you at any time tell any entrymen or entrywomen that you had located, or that the firm of Wells & Downs located during the year 1901, that any money would be furnished them for proving up?

A. No, sir; I did not.

Q. Did you tell any such entryman or entrywoman what they could make by filing upon a timber and stone claim? A. No, sir.

Q. Did you know, Mr. Wells, what could be made at that time? A. No, sir.

Q. Did you know of anyone at that time that would advance money or buy these claims?

A. Not before I talked with Mr. Sweet, as I testified.

Q. So, that all of the entries or filings during the months of July, August, September, October, November and up to Christmas of December, 1901, with

(Deposition of John I. Wells.)

which you had anything to do were made before you had made any arrangements with any person, firm or corporation, for the advancement of money under any conditions at all. A. Yes, sir.

Q. Is that a true statement of the fact?

A. Yes, sir.

Q. At the time you located these people upon the land, or any of them, did you have any talk with them whatever as to what they should do with the land when they acquired title? A. No, sir.

Q. Were you authorized by any person, at any time to buy these claims from the entrymen before the year 1902? A. No, sir.

Q. Did you at any time locate any man or woman upon timber claims in the state of Idaho under an agreement or arrangement as to what they should do with the title when they acquired it?

A. No, sir.

Q. Did you ever authorize Dean West or any other person to state to any entryman or entrywoman, that money would be furnished them with which to make final proof or that the lands which they were about to acquire would be purchased by any person, firm or corporation? A. No, sir.

Q. Did you make a purchase yourself of claims, Mr. Wells? A. When?

Q. Any time after final proof. A. Yes, sir.

Q. What claims did you personally, buy?

A. I bought Mr. J. J. Keane's.

Q. Did you ever buy any other claim?

A. No, sir.

Q. Well, after you made this arrangement with

(Deposition of John I. Wells.)

Mr. Sweet to loan money to the parties you had located or to such of them as needed it, did you, from time to time, get money from Mr. Sweet for that purpose? A. Yes, sir.

Q. Well, just state how that was done, who handled the money and how?

A. Mr. Sweet would get the money and bring it to me, either at my office or the Overland Hotel where he was stopping. I would go to him and tell him so and so was going to make proof and wanted to borrow the money and he would go and get the money and give it to me.

Q. What did you do with the money?

A. Well, I gave it to the man who was going to make proof.

Q. What, if any, security or evidence did you take?

A. Sometimes I took their note, others I relied solely upon the recommendations furnished me by Mr. West on these people to return to me the receiver's receipt that they would get for the land after they got proof.

Q. When you did not take notes, state whether or not receipt was brought to you?

A. Yes, in most cases.

Q. Well, what kind of a receipt was that?

A. Well, it proved to be a temporary receipt, I mean by that, it was a receipt for the money by the receiver, signed by the receiver of the Boise Land Office.

Q. Well, how did they furnish any security to you, Mr. Wells?

(Deposition of John I. Wells.)

A. The receiver of the Land Office requested these people that when he got orders from the commissioner of the general land office to issue a final receipt that he would do so, upon a return of this temporary receipt, and when I had the receipt in my possession they could not get a final receipt, so I would be posted as to when they were notified that this final receipt was about to be issued by them coming to me after the temporary receipt.

Q. At the time of delivering the money to these entrymen with which to make final proof, state as to whether or not you had any negotiations with them looking to the purchase of their claim.

A. No, sir; not any. I felt relieved for being able to let them have the money because there was a lot of vacant timber in that country that I intended to begin locating anew as quick as Mr. Downs could go into the timber in the spring on account of the snow.

Q. What effect would it have had on your business as a locator if these men located in 1901 had not made final proof?

A. That I could not say, for the reason that my object was, that if these people did not make final proof that it would be much harder for me to get applicants for the timber. As to what the outcome would have been, I could not say, if they had not made proof.

Q. Was the loaning of the money to the entrymen made any part of any agreement by which the entrymen obligated themselves to turn over their property

(Deposition of John I. Wells.)

to you or any person you might name?

A. No, sir.

Q. Mr. Wells, during the entire course of your timber dealings in the Boise Basin, did you ever negotiate with any person for the purchase of his or her claim before the regular receiver's final receipt and final certificate had been issued?

A. No, sir.

Q. Now, after Mr. Sweet had made this arrangement with you, state as to whether or not any more people were located by you and Mr. Downs in the Boise Basin proper, during the months of January, February, March and the first ten days of April, 1902?

A. Yes, sir, there had been. I think in March, we began locating anew.

Q. Were any of these entrymen advised by you, or told by you, or did you advise anyone to tell them, that the money to make final proof would be furnished to them?

A. No, sir.

Q. Did you locate, you or your firm, during these months, as the representative of anybody further than yourself?

A. Myself and Mr. Downs.

Q. Did you have any interest whatever in the lands they were entering, other than your fee as a locator?

A. No, sir.

Q. Did you advance any money to any entryman or entrywoman to make their final proof after April 10th, 1902?

A. No, sir; except I might have aided one or two, which was my own money.

(Deposition of John I. Wells.)

Q. Can you recall anyone?

A. Mrs. Thompson, I can recall, and I think one or two others, I loaned a portion of the money that they made final proof on.

Q. Whose money was it that you loaned to any entrymen or entrywomen after April 10th, 1902?

A. My own money.

Q. Did Frank Steunenberg, John Kinkaid, A. E. Palmer, James T. Barber, Sumner G. Moon, Horace S. Rand, George S. Long, or William Sweet, or either of them give you any money to be loaned or advanced to entrymen or women after April 10th, 1902? A. No.

Q. Did John Kinkaid ever give you any money at any time to be advanced or loaned to entrymen or entrywomen? A. No, sir.

Q. Was Mr. Kinkaid at any time interested in the locating business of Wells and Downs?

A. No, sir; only in a few instances he instructed friends of his, I believe, to see me or else Mr. Downs.

Q. I mean was he interested in a financial way in your office? A. No.

Q. Was Mr. Pritchard? I did not include Mr. Pritchard in that other question. Did he ever give you any money to advance to entrymen or entrywomen at any time? A. No, sir.

Q. Did Mr. Sweet, at any time, so far as you know, buy any of the lands entered by entrymen or entrywomen in the Boise Basin?

A. No, sir; not to my knowledge.

Q. Did you know what Mr. Sweet's object was,

(Deposition of John I. Wells.)

loaning you money for these entrymen or entrywomen?

A. Mr. Sweet's business was a promoter of mines, and my opinion as to Mr. Sweet's idea, was that he intended to hunt a purchaser for these lands and then buy.

Q. Did you know of the fact, that during the months of December, 1901, and up until June, 1902, there was a general order suspending the order of timber and stone of financial value until they could be heard at Washington?

A. I had heard that there was a general order by the commissioner or of Secretary of the Interior that covered the whole of the Northwest Territory. Mr. Garrett, never, at any time, give out that information to me, or any of the applicants that I know of.

Q. Did you know of the fact, that owing to the failure of the entrymen to get final receipts, that Mr. Sweet became somewhat anxious to dispose of his interests?

A. Yes, sir.

Q. Do you know of his disposing of it?

A. Mr. Sweet came to me and told me that he had sold out his interests.

Q. And to whom did you next hear he sold to?

A. I understood from what he told me that he had sold to someone through Governor Steunenberg. I afterwards found out that it was a man by the name of A. E. Palmer.

Q. After the sale from or by Sweet to Palmer, state as to whether or not, you ever advanced any money of Mr. Palmer's or Mr. Steunenberg's or any

(Deposition of John I. Wells.)

other person than yourself, as you have stated, to any entryman or entrywoman to make final proof?

A. No, sir; I did not.

Q. Did Governor Steunenberg, ever, at any time, give you any money for such purpose?

A. No, sir.

Q. Did you know the defendant, L. M. Pritchard?

A. Yes, sir.

Q. When did you get acquainted with him?

A. During the spring of 1902.

Q. Did Mr. Pritchard have any interest in or with the firm of Wells & Downs, or in the business they were carrying on? A. No.

Q. What was Mr. Pritchard's business of Boise?

A. Real estate and law business.

Q. Did you have occasion to employ him in any matters?

A. Yes, I had him do quite a little business for me in a mine, but had nothing to do with him in regard to the timber business until I bought John Keane's land. Mr. Pritchard made out the deed at my request.

Q. Now do you know who John Keane deeded that land in the first instance, to whom?

A. To me, myself.

Q. What did you do with that land?

A. Sometime after, I sold it to Governor Steunenberg.

Q. What, if anything was done toward a new deal?

A. Governor came to me one day, he says, "That

(Deposition of John I. Wells.)

deed of Keen's to you, I would like for you to see Mr. Keen and have him make a deed to my people," and it proved to be Palmer. I saw Mr. Keane and told him I was requested by a party to whom I had sold his land to, to make a new deed, so Mr. Keen went up to Mr. Pritchard's office, or said he would go, and I never heard anything more about him. I supposed he had given a new deed and always did suppose it.

Q. Mr. Wells, did you ever, at any time, buy any of the lands you located for the Barber Lumber Company? A. No, sir.

Q. Did you ever purchase any of the lands you located for Governor Steunenberg?

A. No, sir.

Q. Or for A. E. Palmer? A. No, sir.

Q. Or for Mr. Pritchard, Mr. Kinkaid, Mr. Long or Mr. Rand or Mr. Barber or Mr. Moon?

A. No, sir.

Q. You understand, Mr. Wells, the names I have mentioned are the persons of the defendants named in this action? A. Yes, sir.

Q. Did you assist in any manner, the Barber Lumber Company or any of the defendants I have named in negotiating or purchasing the lands of the people you located?

A. The folks I had loaned the money to, Mr. Sweet's money, I was requested some time in June, 1902, by Mr. Steunenberg to let him know what parties I had loaned money to, and he said that he wanted me to look out for that and collect the money

(Deposition of John I. Wells.)

that I had loaned to the applicants or people I had loaned to, and when I was talking with Mr. Sweet, right away after he sold out, Mr. Sweet says: "Now, John, I have made a little money. Now, he says, you can charge these folks for the use of the money, and take' that for my services in the matter, and that was what I did when the Governor came to me and told me he wanted me to collect it. In almost every instance I collected more than I had actually loaned these people.

Q. How did you make the collections?

A. Well, these people would come to me as soon as the Land Office notified them that their final receipt would be issued. They were so pleased that they would come to me and tell me about it. If I did not have their receipt in my possession I went and got it and turned it over to them, and they would go up and get the final receipt. Then they would want to sell, and I encouraged them to sell, because I wanted to collect that money.

Q. To whom did you direct them, as a place where they could sell?

A. Mr. Pritchard's office.

Q. (Repeat.)

A. I would tell them that I would see, and for them to come back either in the afternoon (if it happened to be in the afternoon that I saw them), the next day, and I would let them know whether they could sell it or not. In the meantime I would see Mr. Pritchard.

Q. And what, if any, arrangements did you make

(Deposition of John I. Wells.)

with Mr. Pritchard about the money?

A. I told him so and so wanted to sell his claim, and that I had requested him to come back at a certain time, and I would give Mr. Pritchard a statement of what I wanted to collect and he would see to it.

Q. Did you arrange the price for which the property would be sold? A. No.

Q. Did you take that up with them at all?

A. I would send them to Mr. Pritchard and he would make the deal as to price, and then he would deduct what I asked him to.

Q. What did you do with the money Mr. Pritchard would collect for you and turn over to you?

A. I would keep it until I saw Mr. Steunenberg, and I would return to him the exact amount that I had loaned to them for Sweet.

Q. And the balance you kept for yourself?

A. And the balance I kept for myself.

Q. For whom was Mr. Pritchard working at that time?

A. I understand he was acting for Mr. Kinkaid.

Q. In what capacity?

A. Buying timber claims and acting as Notary, something of that kind. Just what capacity, I could not say.

Q. Now, you have told us your connection with the claims entered upon which you loaned Sweet's money, what, if anything, did you have to do with the purchase of claims of the parties who did not borrow money from Sweet?

(Deposition of John I. Wells.)

A. Nothing, whatever.

Q. Mr. Wells, how many distinct tracts of timber was up there which was involved in this timber, groups I mean?

A. There was the Basin timber, and the North Fork of Boise River and Crooked River and another tract known as six-4.

Q. Now the North Fork and Crooked River are spoken of in this evidence as "Crooked River Tract"? A. Yes, sir.

Q. So there are three different tracts?

A. Yes, sir. The original entries were made in what was called the Basin country. To be more exact, it was in Township 7 North, Range 5 East and 8 North, Range 5 E., 6 N. and R. 5 East.

Q. Did you know how many entries altogether were made in the Basin tract?

A. About 117 or 118.

Q. They were substantially all made in the year 1901 and the first six months of 1902?

A. Yes, sir, practically all of them.

Q. Now what was the tract upon which entry was made? A. Crooked River Tract.

Q. Who discovered the Crooked River Tract?

A. Mr. Downs.

Q. When did he discover it?

A. In the summer of 1902, in June and July.

Q. For whom was Mr. Downs acting for, if any one, when he discovered the Crooked River Tract?

A. He was working for me and himself.

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Q. Did he go over the land during the summer?

A. Yes, sir.

Q. Did he make an estimate for the purpose of enabling him to locate people upon it?

A. Yes, sir, in regard to the body of timber that was there, he told me it was something like 100 claims up there when he came down and reported.

Q. Who paid Mr. Downs' expenses when doing that work?

A. I paid his expenses as he reported to me. He went up on the South Fork of the Boise River, my instructions, and crossed over to the Middle Fork, and from the Middle Fork over to the North Fork and from the North Fork over to the Crooked River, and arrived at Mr. Kempner's ranch, and he stayed there something like ten days or two weeks, which was the most of the expenses of his trip at Mr. Kempner's, which I paid.

Q. Was Mr. Downs or you or the firm of Downs & Wells employed by Mr. Kinkaid, Mr. Steunenberg, or any one else to cruise that country?

A. No, sir.

Q. What was your object in making the cruise?

A. Was to locate people and charge for locating fee, which was our business.

Q. Had you any other interest in the locating of claimants upon this land, except the pay you received from locators from entrymen or entrywomen?

A. No, sir.

Q. Had you executed all the claims in what was known as the Basin country at that time?

(Deposition of John I. Wells.)

A. Yes, sir.

Q. Was it necessary to discover or find new timber if you were to continue in the locating business?

A. Yes, sir.

Q. Did Mr. Kinkaid have any interest at that time in the firm of Downs and Wells, in the business they were carrying on?

A. No, sir.

Q. Did Mr. Steunenberg?

A. No, sir.

Q. Mr. Pritchard?

A. No, sir.

Q. Did any one have any interest other than you two?

A. No, sir.

Q. When did you begin locating people in the Crooked River country?

A. About September, 1902.

Q. State what part of the work you did and what part Mr. Downs.

A. Mr. Downs went up with the first load of people and he stayed up there practically until it was all located. I sent the people up to him and seen to collecting the money for locating them or aided them in any way in getting up their papers, and also instructing them where to go to file.

Q. State as to whether or not there was a great demand for entries at that time, by the people of Boise.

A. Yes, sir. After the first load or two went up, why others followed them unbeknown to me, and I had practically nothing to do in regard to sending them up. I was a man of leisure most of the time when Mr. Downs was working.

Q. State as to whether or not you had many ap-

(Deposition of John I. Wells.)

plicants by people residing in Boise.

A. Yes, in the spring of 1902, many applicants, and it was very easy to make up a load of people to start out the next morning for the timber.

Q. Was it necessary after the spring of 1902, to urge or solicit people to exercise their rights on the timber and stone action?

A. No, sir. Lots of people went into Oregon in the Northwest, looking for timber claims.

Q. State as to whether the principal part of your business while Crooked River was being located, that they did not go up to visit and parties could go up together, get the parties together.

A. The principal part of my business was to collect the location fee, but I went up and aided Mr. Downs in locating or catching up with his business up there. They were camping all up and down Crooked River, awaiting until Mr. Downs could show them their claims. When I arrived up there, the first morning I was there, there was sixteen people left Mr. Kempner's ranch with us to go out and look at timber claims. We got to a certain point in the timber, and I worked one way from that point and Mr. Downs the other. We showed all of them their land that day.

Q. What was your charge for locating these people in Crooked River? A. \$25.00.

Q. Who paid that \$25.00?

A. The applicant or person who filed.

Q. Were you or your firm employed by any person, firm or corporation to locate any one other than

(Deposition of John I. Wells.)

the applicant himself or herself? A. No, sir.

Q. There has been some evidence of people having their numbers they were going to locate before they arrived at the timber. I will ask you, Mr. Wells, who gave the various applicants the description of the land they had selected?

A. Mr. Downs, always.

Q. Did you at any time in the Basin of Crooked River send any applicant to view any particular piece of timber?

A. No, sir, with the exception of a man named Humphrey. There was one claim that had been filed on and reverted back to the Government that I gave Mr. Humphrey, that I gave the exact numbers of the land, for which he paid me a \$25.00 location fee.

Q. With that exception, state whether or not, all of the selections were made by the applicants after viewing the land and on the land?

A. Yes, sir, all of them.

Q. What was the universal practice of your firm in the matter of paying the locating fee and giving them the description?

A. I would send them up to Mr. Downs, and Downs having cruised and run out the lines before, would take them out to the corners, take them half around their claim or diagonally across and left it to the applicants and they settled it among themselves, which claim they should have. Sometimes only a party of four, and these four would go out and view four claims in a bunch, and that would be

(Deposition of John I. Wells.)

all the claims in that vicinity, and Mr. Downs, of course would tell them the facts, and they would decide in what manner, which should have such portions of these four claims, as they agreed on it.

Q. What would Mr. Downs do with the descriptions?

A. He would make out the descriptions, as they had been previously agreed upon between the applicants, and he would put them in an envelope and give them to some one of the party and instruct them to report to me, and then I would make out some of the papers and some times friends of theirs would make out papers, and they would go to the Land Office and get a set of application papers. I would instruct them to that course, they would not know what to do, and I would fill out some of them, and sometimes they would have friends that was handy with clerical work and would have to make them out, and some would fill out their own papers and then would go to the Land Office and file them. After filing was accepted, our fee was then due, and I proceeded to get a hold of that \$25.00.

Q. State as to what connection if any, Mr. John Kinkaid had in the matter of locating people in the Crooked River country.

A. He had none.

Q. Was he interested in any way in the fee you received or in the business you were conducting in the Crooked River country?

A. No, sir.

Q. It appears in evidence, that some, at least, of the filing papers in the Crooked River country,

(Deposition of John I. Wells.)

were prepared by Mr. Kinkaid.

A. I don't know anything about that, only they might have told me at the time that Mr. Kinkaid prepared the papers, making their filing was all that I was interested in.

Q. About how many claims were located in the Crooked River country, beginning September, 1902?

A. Between 90 and 100.

Q. Mr. Wells, did you ever at any time, purchase any of the claims from any of the persons you located in the Crooked River country?

A. No, sir.

Q. Were you employed by Mr. Kinkaid, Mr. Steunenbergh, Mr. Rand, the Barber Lumber Company, or any of the other defendants, including Mr. Pritchard, to purchase or assist in purchasing any of the lands upon which you located applicants in the Crooked River country?

A. No, sir.

Q. Were you paid any compensation by way of salary, commission or otherwise, for any of the purchases made by or in behalf of any of the defendants of the lands in the Crooked River country?

A. No, sir.

Q. Did you exhaust the available timber lands in the Crooked River country with entrymen?

A. Yes, sir, everything we thought would appeal to an applicant to file upon, was filed on.

Q. Now, the next and only remaining tract involved in this litigation, is known as the 6-4 lands. What, if anything, did you have to do with locating people on 6-4 lands?

A. Nothing whatever.

(Deposition of John I. Wells.)

Q. State whether or not you were in partnership with Mr. Downs at the time he located people in that town. A. No, sir, I was not.

Q. What, if anything, did you have to do with purchasing the lands which were entered in the town of 6-4? A. None whatever.

Q. What, if anything, did you have to do with selling the lands in town 6-4?

A. None whatever.

Q. Did your connection with the timber business in the Boise country terminate when you located the last of the people in the Crooked River country? A. Yes, sir.

Q. Have you had anything to do with it since?

A. Yes, in small tracts.

Q. Have you been engaged in locating people since then? A. Yes.

Q. In the last four or five years how many have you located altogether?

A. Over in the Basin country, none. In 5 north and 3 east and 6 north 3 east, we located about 27 claims a year ago last summer.

Q. Who do you mean by we?

A. Mr. Downs and I.

Q. For whom were you employed in making these locations? A. No one.

Q. What were you paid for each location there?

A. We got \$125.00 a claim.

Q. Who paid you that amount?

A. The applicant.

Q. Did you have anything to do with the subse-

(Deposition of John I. Wells.)

quent sale of it? A. No, sir.

Q. Do you know whether it is sold at all or not?

A. No.

Q. Now, Mr. Wells, you say you first came with Mr. Pritchard in the spring of 1902. Was that before or after the month of June, when Mr. Pritchard commenced buying claims? A. Before.

Q. Can you state how long before?

A. Something like about three months.

Q. So that would be about March, 1902, you did not know Mr. Pritchard at all?

A. February or March.

Q. When did you get acquainted with Governor Frank Steunenberg?

A. I never was personally acquainted with Governor Steunenberg until about June 1902.

Q. At the time Sweet sold out, April, 10, 1902, up to that time had you met Governor Steunenberg or become acquainted with him?

A. No, sir, I knew him by sight, because he had been pointed out and he had been governor of the state twice. I had never spoken to him up to that time.

Q. Up to April 10th, 1902, did you know Governor Steunenberg was interested with William Sweet in the timber business?

A. No, sir, I did not.

Q. Up to that time did you know of any interest Mr. Sweet had actually acquired in the Boise Basin?

A. Only one thing I knew was him loaning that money, is the only interest I know.

(Deposition of John I. Wells.)

Q. Now, up to that time, April 10th, 1902, what, if any, business relations had you with Mr. John Kinkaid?

A. The first time I ever saw John Kinkaid, the first time I ever had any business with Mr. John Kinkaid, was just before Anderson and Nugent had borrowed that money from me, that was about the first of December, 1901.

Q. Did you know of Mr. Kinkaid having made a timber and stone entry? A. Yes, sir.

Q. Who located him, do you know?

A. I showed Mr. Kinkaid a piece of land joining the State timber in 6 north, range 5 east, and was trying to get Mr. Kinkaid to locate on that particular piece of land.

Q. When was that?

A. That was along about October, 1901.

Q. Did he locate on it?

A. No, sir, not at that time.

Q. Did he afterwards locate on it?

A. Yes, sir.

Q. Do you know when?

A. Sometime in January 22d.

Q. Did he pay you anything for locating?

A. \$25.00.

Q. When was that paid?

A. That was paid just after he filed.

Q. Now, up to that time, had you any conversation or talk with Mr. Kinkaid with reference to your business of locating people in that country, except in reference to his own claim?

(Deposition of John I. Wells.)

A. No, sir, except I had asked his advice on matters in regard to proving up and about locating.

Q. Did you know Mr. A. E. Palmer?

A. No, sir.

Q. Did you ever have any relations or business transactions with him? A. No, sir.

Q. Did you ever have any correspondence with him? A. No, sir.

Q. Did you ever discuss this timber involved in this suit with him? A. No, sir.

Q. Did you have any business transactions with him at all? A. No, sir.

Q. Did you know Horace S. Rand or George S. Long? A. No, sir.

Q. Did you ever have any correspondence with either of them? A. No, sir.

Q. Or any business transactions with them?

A. No, sir.

Q. Did you know James T. Barber or Sumner G. Moon? A. No, sir.

Q. Did you ever have any correspondence with them? A. No, sir.

Q. When did you say you first became acquainted with Governor Steunenberg?

A. In June, I believe, 1902.

Q. State as to whether that was at or about the time the so-called suspension order was vacated and Mr. Pritchard acting for Mr. Kinkaid began to buy this land?

A. It was just before, I believe. I went to the Idanha Hotel and met him there and introduced my-

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self, and told him that I had bought a timber claim, and asked him what it was worth. Well, he said he didn't know, he would see me later about it, and while in conversation at that time, he mentioned the Sweet loans, and he told me that he wanted me to look after collecting that money. I told him I would, for I wanted to make a few dollars out of it myself, so something to that effect.

Q. Mr. Wells, L. K. Burns, who having filed on a claim in November, 1901, and stated that it was under an agreement that he was to turn it over to the Barber Lumber Company for \$200.00 or \$300.00 more than it cost him, and the money was to be furnished with which to make final proof. I will ask you as to whether or not you located Mr. Burns.

A. Mr. Burns was one of the parties that Mr. Dean West had gotten to go and file on timber land for me, and Mr. L. K. Burns, I never knew until about time he was making final proof.

Q. Did you ever promise him \$200.00 or \$300.00 for his land? A. No, sir.

Q. Did you authorize Dean West to make such a settlement? A. No, sir.

Q. Did you promise to furnish him money with which to prove it? A. No, sir.

Q. Did you authorize anyone else to do so?

A. No, sir.

Q. On November 26th, 1901, had you any money in sight for either the purchase or proving upon claims? A. No, sir, I did not.

Q. Had you made any arrangements with any-

(Deposition of John I. Wells.)

one for money at that time? A. No, sir.

Q. Now, Mr. Wells, Mr. Gillham testified that you asked him to sign an agreement, I think at the time you loaned him money. I will ask you as to whether or not you took an agreement with Mr. Gillham, or any other person as to what they should do with this land?

A. No, sir. I never asked anyone to make an agreement to what he should do with his land, but in Mr. Gillham's case, he said he had money to prove up and he was going to Thunder Mountain, and his wife had filed on a timber claim and he had enough money for her to make final proof, but he said that was about all the money she did have, and he asked me if I would loan her the money, and I told him yes, but I wanted him to sign some due bill or something of that kind, so that I could hold Mr. Gillham as security jointly with his wife for this money.

Q. Did you ask him to sign any agreement of any kind as to what he should do with the land?

A. No, sir, I did not. This other agreement was in regard to the money that I was going to loan his wife, and the agreement was that I had agreed to furnish the money when the time came for her to make final proof, which was verbal, that I wanted Mac' to sign a due bill or something as to hold him as security for his wife's note, the money that I was to loan his wife.

Q. Man by the name of Lane testified that Mr. Pritchard paid him, Mr. Lane, for some of Wells' teams. Did you hire any teams from W. C. Lane?

(Deposition of John I. Wells.)

A. Yes, I did, a good many of them.

Q. Were they for the purpose of conveying locators to lands?

A. Yes, sir. I would get a load of people to go out, generally in the morning. I would go to the livery barn, order a team and have it at the Pacific Hotel, and my applicants would be there at a certain time, and the people, they would go in the rig and go out to look at the timber. When they came back, if they did not go to the stable and settle the bill, they would come to my office and I would phone to the barn and find out what the bill was, and they would pay it to me, and I would pay it to Mr. Lane.

Q. Did you at any time, or the firm of Wells and Downs, furnish free transportation to applicants?

A. No, sir.

Q. Did Mr. Pritchard pay any team hire to Mr. Lane for you? A. No, sir.

Q. Mr. Walter Harrison testified that he offered to sell you his land before he had made final proof for \$200.00. Do you remember anything about that?

A. I don't remember.

Q. Did you have any connection with Mr. Harrison in this matter other than locating it?

A. No, sir.

Q. Did you buy or assist in his claim in any way?

A. I might have loaned him some money, either before he made claim or just afterwards. He was building at that time, and I have a faint remembrance of Mr. Harrison coming to me to borrow money.

Q. Did you loan money to everybody that asked

(Deposition of John I. Wells.)

you, Mr. Wells? A. Not by a good shot.

Q. Did you know Ery A. Wilmott?

A. Yes, sir.

Q. You loaned him some money?

A. To make proof, I did.

Q. Did you have any arrangement of any kind with Mr. Wilmott or with Mr. Allen, or with any of the entrymen or entrywomen named in the complaint in this section, Mr. Wells, that you have looked over in reference to what they should do with their land when they got title?

A. No, sir, none whatever.

Q. Did you have any discussion with them about the final proof? A. No, sir, I did not.

Q. What was your understanding of the timber and stone law at that time?

A. I understood that every man or woman over twenty-one years of age, had a right to file on timber or stone land, and they would make application to purchase, and after a certain length of time they would have it advertised; after a certain length of time make proof, then tender the money to the U. S. or land office, and thereupon get their title.

Q. In all your negotiations, did you in any of this matter intentionally or otherwise, do anything in violation of the law as you understood it at that time? A. No, sir, I did not.

Q. Did you ever, for yourself or for anyone else, or authorize anyone else in your behalf, or in behalf of anyone else, to purchase any land upon which you located claims? A. No, sir.

(Deposition of John I. Wells.)

Q. And with the exception of Keane, I believe, you stated you never did? A. Yes, sir.

Q. In the Keane claim, at the time you bought had final receipt been issued to him?

A. Mr. Keane had been sick for some time, and he could hardly get around and he thought he had to go down to Arizona or New Mexico, I believe the doctors advised him to go down to New Mexico, and he came to me and said he had his final receipt and he wished he could sell his claim, and he asked me if I knew of anyone to buy, and I said "No," and he said, "Could I sell it to you?" I told him I could not pay him much for it and I believe I made him an offer, and I would pay him so much more money than I had loaned him, if he would make me a deed. He went home and came back the next day and said he would take it. His wife came back next day and said Mr. Keane was ready to sell and I told her to go back and tell him to be up to Mr. Pritchard's office some time that afternoon, and that afternoon his wife came down with him in a hack and he took the elevator and came up to the third floor and went to Mr. Pritchard's office and he made me this deed.

Q. Mr. Wells, do you know Mr. J. E. Hobbs who testified in this case? A. Yes, sir.

Q. You heard him testify? A. Yes, sir.

Q. Do you remember his testifying that after he had filed, he had a talk with you, in which you asked him if he was going to prove up, that he said he intended to, and that the day before he proved up you came to his office and handed him some money,

(Deposition of John I. Wells.)

saying to him at the time, "You know what that is for," and in which you told him to say that it was his own money. Did any such conversation take place?

A. No, sir.

Q. State solely your connection with Mr. Hobbs in this case.

A. I knew Mr. Hobbs for as much as a year before that. He was an assayer. As I was getting a good deal of that work done, Mr. Hobbs had done up to that time practically \$500.00 or \$600.00 worth of work for me, and I asked to go out to Crooked River and take up a claim, and I arranged the party this way: Mr. Hobbs was busy most of the time assaying and he wanted to go Saturday and get back Sunday. I told him he could make it by leaving Boise Saturday noon, and driving late Sunday night, he could make it back. Mr. Downs, this Saturday morning, had left Boise with four other people, and Mr. Vance and Mr. Hobbs was to overtake Mr. Downs and his party on the road, and they thought they could do it because they had a lighter rig, and which they did do. There was nothing said about furnishing money to Mr. Hobbs. He thoroughly understood what it would cost to go up and take a claim and make proof, and there was nothing said about the money to make final proof until probably two weeks before the date was set for him to make his proof. I was in and out of his office almost every day after he filed until he made final proof. About two weeks before he made final proof he told me that he would have to borrow some money, that his busi-

(Deposition of John I. Wells.)

ness was not as good as he thought it would be, and wanted to borrow it from me. I told him that I might have the money at that time and I might not. We had talked over this thing several times before I told him I would let him have the money, and finally I agreed to let him have the money, and the day before he proved up I took the money to his office, and I told Mr. Hobbs, now this was only loaned to him with the understanding that he was to pay me back as soon as possible, and he said he thought he could pay me back inside of sixty days. I might have said to Mr. Hobbs when I took the money to his office, that here was that money. There was nothing said about how he should swear in the land office.

Q. Mr. Hobbs' entry was made in the Crooked River country in August 10th, 1903, final proof November 10th, 1903? A. Yes.

Q. Can you state whose money that was you loaned to Mr. Hobbs?

A. It was my money.

Q. Mr. Hobbs complained that some excessive location fee was taken out when he sold to Mr. Pritchard?

A. Yes, that was the money taken out at my request for the use of the money.

Q. That was your profit in the matter?

A. Yes.

Q. Next notation I have here was Homer C. Granger, Was there anything here you wanted to speak about?

A. Nothing, only Mr. Homer C. Granger came to

(Deposition of John I. Wells.)

Boise at my request, as he was one of my witnesses and one of my wife's witnesses, (witness for both of us, and it took a good deal of persuasion to get him to come down at that time.

Q. I believe that you loaned him a small part of the money that he used in making his final proofs?

A. No, sir.

Q. Do you know whose money that was you loaned?

A. Yes, sir. That was my money. That was the reason I had to borrow some money from Mr. Sweet, because I wanted to loan Granger some money, that I borrowed a little over \$100.00 from Mr. Sweet.

Q. Mr. Granger made final proof the same day you did? A. About that same date.

Q. Do you know Mrs. Mary Thompson who testified? A. Yes, sir.

Q. She is the wife of D. G. Thompson?

A. Yes, sir.

Q. *She is the wife of Tom Thompson?*

A. *Yes, sir.*

Q. Did you loan her some money?

A. Yes, sir, that was my money.

Q. Just state the circumstances as well as you can, how you came to loan her money.

A. Mr. Thompson came to me and wanted to know if he could borrow some money from me to prove up on his and his wife's timber claims. He said that he wanted to get the money through his wife's estate and he failed, then he tried to get it from his wife's brother, who was administrator of his wife's

(Deposition of John I. Wells.)

estate, and I told Mr. Thompson that I had no money to loan and could not let him have it. Well, then, he went and talked with Dean West and Dean West came to me to see if I had any money to loan, and I told him I had no money to loan, but that I might be able to raise a little money, but it would be all I had. Dean told me how hard up they were, so I went to work and tried to raise all I could and Dean said he would do the same, so I raised enough for one claim, and Mr. Thompson says, "I will let my wife prove up," and he said he would readvertise, and by that time he might be able to get the money he was expecting to get, and his wife used my money for final proof, and Mr. Thompson, I learned afterwards, did not readvertise for the reason the receiver told him he could not let him advertise for some reason or other, so he never did make final proof on his claim. Mrs. Thompson sold her land and brought me back my money at my office and tendered me \$25.00 for the use of it. I therefore told Tommy Thompson if he wanted \$400.00 I could let him have it, and he said he did not want it, for they would not let him readvertise.

Q. Did you describe their condition?

A. No, Mr. West did.

Q. Do you know a man by the name of Hoover Sedgwick?

A. Yes, sir.

Q. Did you let him have some money to prove up with?

A. Yes, sir.

Q. Did you hear him testify?

A. Yes, sir.

(Deposition of John I. Wells.)

Q. Did you hear an affidavit read reported to have been made by Mr. Hoover Sedgwick, in which he said that Wells asked him if he had money and gave it to him and told him to say it was his own? Do you remember that? A. Yes, sir.

Q. Did you ever tell Mr. Hoover Sedgwick what to testify in the land office? A. No, sir.

Q. Well, did you ever tell any of the people you located or to the people who you advanced money what to say when they were examined by the officers at the land office? A. No, sir.

Q. Was Mr. Hoover Sedgwick one of the Dean candidates? A. I think so.

Q. Did you know him before?

A. I never knew him till he filed on the land, and came up to my office to pay \$25.00 for location.

Q. Did you ever authorize Mr. Dean West to tell Hoover Sedgwick that there would be a purchaser for the land at any price?

A. No, sir. I did not. The nearest I ever came to that, I told him it would be worth a good deal more money sometime in the near future, and that it was a good investment.

Q. Did you ever authorize Dean West or any other person or prospective entrymen what they could get out of it, or that they could make some out of it?

A. No, sir. I never knew what the timber was worth, only judging from the price of said land sold at auction, I thought it was worth a good deal more money than anyone ever got for timber claims in the

(Deposition of John I. Wells.)

basin of the country, but if I told him at all in regard to its value, it was based upon that theory.

Q. Do you know W. H. Humphrey? .

A. Yes, sir.

Q. Do you know A. R. Brookhart?

A. Yes, sir.

Q. Did you have any talk with Mr. Brookhart, A. E., about loaning him some money?

A. I don't think I ever did.

Q. Do you know his father?

A. Yes, sir. I have known his father since 1880, and I knew him in Kansas.

Q. What was his business?

A. He was a Minister of the Gospel.

Q. Did he have any talk with you about money?

A. Yes, sir.

Q. Did you loan the elder Brookhart some money? A. Yes, sir.

Q. And for the use of his son, A. E. Brookhart and his daughter, Mrs. Stevenson?

A. Yes, sir.

Q. Was there any talk at the time who it was to be used for?

A. Yes, Mr. Brookhart came to me, I had been to visit him a time or two shortly after I came from the Basin, and just in a visiting way, finally asked him to file on a timber claim. He said he would like to, and his wife spoke up and said, "I would like to file on a timber claim," and he said, "Mary, you ought to go." And it run a little longer and I told her the first load went up I would fix it so she could go, and

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so I did.

Q. State if you loaned any money for the young man. I do not know whether I got the right family or not.

A. Yes, I loaned money to the old gentleman, Mr. Brookhart, I think his name was Edward.

Q. Do you remember how much?

A. I loaned one \$400.00 and the other \$412.50, and in all \$812.50.

Mr. GORDON.—Q. Was one of these you referred to for his daughter, Mrs. Stevenson, and the other for his son, Arthur Brookhart?

A. I think it was for the daughter and the son.

Mr. BUNDY.—Q. Then you did not loan for the old lady? A. I think not.

Adjournment, 5:30 until 9:30 Saturday morning.

April 3d, 1909.

Pursuant to adjournment. Present: Peyton Gordon, Esq., and Charles A. Keigwin, Esq., of counsel for complainant, and C. T. Bundy, Esq., of counsel for the defendant, the Barber Lumber Company.

Direct Examination.

(Continued by Mr. BUNDY.)

Q. Mr. Wells, do you know L. S. Stevenson, and his wife, of Boise? A. Yes, sir.

Q. She is the lady you testified was the daughter of Mr. Brookhart? A. Yes, sir.

Q. Did you buy her claim from her yourself?

A. Myself?

Q. Yes. A. No, sir.

Q. She testified that you gave her \$300, for her

(Deposition of John I. Wells.)

claim personally; did you ever pay Mrs. Stevenson \$300? A. No, sir.

Q. Did you ever have any talk with her on the subject, either regarding the entry or loaning of money?

A. I don't think I ever did. I did all that business with Mr. Brookhart, her father.

Q. Do you know Martin S. Stevenson?

A. No, sir.

Q. Do you recall anything about money in connection with him, loaning him money?

A. I loaned him the money.

Q. Will you state the facts leading up to that loan, and how it occurred?

A. Well, he was one of the filers in 1901, and when I got time to make final proof, I believe someone told him that I was loaning money and he came to see me about it, and I loaned him the money.

Q. Was that at or about the time of making final proof? A. Yes, sir; just before.

Q. At the time you located Mr. Stevenson on his timber claim was there any talk with reference to loaning him money to make final proof?

A. No, sir.

Q. Was there any talk at the time of filing, or at the time of loaning the money with reference to your purchasing his claim, or selling it? A. No, sir.

Q. Do you remember what, if any, security Mr. Stevenson gave you, or evidence of indebtedness?

A. He brought me the receipt, if I remember right, from the land office.

(Deposition of John I. Wells.)

Q. Do you know Junius Wright?

A. Yes, sir.

Q. During the time you lived in Boise, did you deal with Mr. Wright in his grocery business, more or less?

A. Yes, sir.

Q. How long did you deal with him?

A. I dealt with him from the time my family moved to Boise until—I think it was in 1905.

Q. Did you have any conversation with Junius Wright in the fall of 1904 or the first few months of 1905 with reference to the amount you were then owing him?

A. Yes, sir.

Q. And more than one such conversation?

A. Yes, several of them.

Q. At any of those conversations did you suggest to him giving security in the way of guarantee by Governor Steunenber?

A. Yes, sir.

Q. Will you state when and where that conversation took place?

A. In his store.

Q. And state the substance of the conversation.

A. Well, he was crowding me for the bill, for the money, and I didn't have the money at that time, but I had it coming to me, and he said he had to have the money, or else he could not let the bill run any longer, and Governor Steunenber went by the store and I called him over into the store and told him the circumstances, and I asked him if he would O. K. me with Mr. Wright; he turned around and walked back towards the back end of the store, and met Mr. Wright; what he said to him I don't know, but Wright said, "That was all right," and my bill ran

(Deposition of John I. Wells.)

right along after that.

Q. Did you have any further talks with Mr. Wright on that subject?

A. No, sir. Mr. Wright never bothered me much after that.

Q. Did you tell Mr. Wright from whom you had money coming?

A. I don't think I did, but I might of.

Q. Did you tell him that you had anything coming from Governor Steunenberg, or from the Barber Lumber Company?

A. No, sir.

Q. Or John Kinkaid?

A. No, sir.

Q. Messrs. Palmer, Rand or Long?

A. No, sir.

Q. Did you afterwards have a conversation with Mr. Wright about two hours in length, sitting on the sidewalk in front of his store?

A. I don't recall any such conversation.

Q. Did you tell Mr. Wright at any time that when John Kinkaid was a member of the legislature he conceived the plan of locating people on timber claims in the Boise District?

A. No, sir; I did not.

Q. And did you tell Mr. Wright that the plan was to have some cruisers locate people and that the plan was to have these people located on claims, for which, when they had proved up on them, they would receive \$400?

A. No, sir; I never did.

Q. And did you tell him that you afterwards became interested with Mr. Kinkaid in the business of locating people under such an arrangement?

(Deposition of John I. Wells.)

A. No, sir.

Q. And did you tell him that you and Mr. Kinkaid continued that business until it used up all of your available funds?

A. No, sir; I did not.

Q. Did you tell Mr. Wright that Governor Steunenberg came and wanted to get in on the deal on the ground floor?

A. No, sir; I did not.

Q. And did you tell him at any conversation that you told Governor Steunenberg that in order for him to come in he would have to put up enough money to equal the money that you and Mr. Kinkaid had spent, and that the Governor gave you \$11,000 to get in?

A. I never had any such conversation with Mr. Wright, or anyone else.

Q. Did Governor Steunenberg ever, at any time, give you or Mr. Kinkaid any sum for any interest in any timber lands in Boise Basin?

A. No, sir.

Q. Did you tell Mr. Wright at that, or any other conversation, speaking of you and Mr. Kinkaid, that your plan of making money out of it, was to turn these claims over to some big concern, some big lumber company at a profit, and that the three of you were to share equally in the profits?

A. No, sir.

Q. Did you tell him that your part of the profits was about \$13,000, but that in handling the money for these people you had lost about \$9,000 and they were trying to hold that out of your share?

A. No, sir.

(Deposition of John I. Wells.)

Q. And then did you tell him in answer to any inquiry as to how you lost the money,—“I kept no books and don't know where in hell this has gone, except I paid out something like \$4,000 to these locators who have got cold feet and have skipped the country before they proved up on their claims.”

A. I never told Wright any such thing.

Q. Did you tell Mr. Wright at that, or any other conversation that whenever you wanted money you went to the First National Bank and if the officials of the bank didn't turn over any money to you, you communicated with Governor Steunenberg, and in a few days you would get the money?

A. No, sir; I did not.

Q. Did you tell Mr. Wright in answer to his inquiry as to the amounts you would handle, that you had handled about \$248,000?

A. No, sir.

Q. Did you tell Mr. Wright that the people who were supplying the money you handled was the Barber Lumber Company?

A. No, sir.

Q. Did you tell Mr. Wright at that or any other conversation, that the arrangement with the entrymen was that you were to pay \$400 to each one upon final proof, and that you also advanced some money for current expenses?

A. I did not.

Q. Did you have any similar conversation to the one I have described, with Mr. Wright?

A. No, sir; I did not; none whatever.

Q. Did you state to Mr. Wright the substance of what I have recited, or anything similar to it?

A. No, sir.

(Deposition of John I. Wells.)

Q. Now, after Governor Steunenbergh had had this talk with Mr. Wright with reference to your account, when did you next, or how long afterwards did you next talk with Mr. Wright about it, or with Governor Steunenbergh?

A. Why, it was some three or four months, I believe. I met Mr. Steunenbergh at the Idanha Hotel in Boise City, and he says to me, he says, "John, before you pay Mr. Wright that grocery bill, I want to see you." And I promised that when I got ready to pay Wright, I would let him know.

Q. State what next you did.

A. And later, some two or three weeks later, I got the money to pay Wright, and the Governor was not in Boise, so I held that money some three or four days until the Governor arrived in Boise, and I went to the hotel to him and told him that I had the money to pay Wright, but he said, "All right, don't pay him until this afternoon; I want to see you first." And in the afternoon I was going back to the hotel to see the Governor and I met him on the corner near Fletcher & Stein's hardware store, and I says, "Now,"—we spoke about this bill and he says,— "Bring him up to Frank Martin's office, I am going up there and bring him up there." So I went to get Wright and asked him to go to Frank Martin's office. We went into Martin's office, the Governor and Frank Martin was sitting in his office room, and he says "Come in here, I want to see you fellows," and we went into Mr. Martin's private office, and he says to Mr. Wright, "Mr. Wells *tell* me that he has the

(Deposition of John I. Wells.)

money to pay that bill, and I asked him before he paid it to let me know; now, I have got a little statement here that I want you to sign," and Wright signed that statement, and I paid him, and he gave me a receipt in full up to date.

Q. Was the statement he signed for Governor Steunenberg, the receipt he gave you, or was that a separate instrument?

A. A separate instrument.

Q. I show you a document dated, "Boise, Idaho, June 17, 1905," purporting to be signed by "The American Grocery Company, Junius Wright, Proprietor," marked in writing "Exhibit No. 1 Junius Wright," is that the receipt that Mr. Wright gave you at that time? A. Yes, sir.

Mr. BUNDY.—I herewith offer this receipt in evidence in connection with Mr. Wells' testimony, and will read it into the record:

On the billhead of the Union Grocery Company, "Junius Wright, Proprietor, between Idanha Hotel and G. Rees store, dated Boise, June 17, 1905,"

"\$437.50, Received of John I. Wells, Four Hundred Thirty-seven and 80/100 Dollars (\$437.80) payment in full of account to date. (Signed) American Grocery Company, Junius Wright, Prop."

Mr. KEIGWIN.—What is the purpose of this paper, for what purpose is it offered?

Mr. BUNDY.—To show the facts relative to the settlement between Mr. Wells and Mr. Wright; to show that Mr. Wright's evidence on the subject is not correct or truthful, this document having been

(Deposition of John I. Wells.)

shown to Mr. Wright when he was on the witness stand and he having denied his signature to it.

Mr. KEIGWIN.—Is this the paper that was shown to Mr. Wright, without showing the signature?

Mr. BUNDY.—I showed him the signature.

Mr. KEIGWIN.—We object to it on the ground that it is immaterial, irrelevant and incompetent, and on the further ground that the paper has not been sufficiently identified by an exhibition of the paper as a whole to Mr. Wright.

Mr. BUNDY.—I will identify it further.

Q. (By Mr. BUNDY.) Mr. Wells, showing you now the receipt which you have testified to as signed, or purporting to be signed by Junius Wright for the American Grocery Company, I will ask you if you know whose signature that is attached to that receipt?

A. Junius Wright signed it in my presence.

Q. You saw him sign that identical paper?

A. Yes, sir.

Q. Did he ever give you any other or different receipt for the amount? A. No, sir.

Q. How long has that receipt been in your possession? A. Ever since the date it bears.

Q. Until when?

A. Until about the 14th of March, 1909.

Q. Then I telegraphed you from Portland to send the receipt there to me, did I not? A. Yes, sir.

Q. And you sent it pursuant to my request?

A. Yes, sir. I think I have the telegram—

Q. Who handed that money to Junius Wright?

(Deposition of John I. Wells.)

A. I did myself.

Q. Did you get that money from Governor Steunenberg? A. No, sir.

Q. State as to whether or not in 1905, the date of this receipt, the entries in the Basin and Crooked River had all been made and final proof concluded, and your interest in that business had been closed?

A. I don't think that there was any timber vacant in that country up there at that time that had been opened for entry.

Q. At that time were you employed in any capacity by Governor Steunenberg?

A. No, sir.

Q. Or by the Barber Lumber Company?

A. No, sir.

Q. Or John Kinkaid? A. No, sir.

Q. Or Mr. Pritchard? A. No, sir.

Q. Or any of the defendants in this action?

A. No, sir.

Q. Did you go back to Junius Wright after the interview in Mr. Martin's office and tell him that he had been paid too much and you wanted part of the money back? A. No, sir.

Q. You spoke of getting up parties to go up to the timber, Mr. Wells; what was the object of having them go up in parties, rather than singly and alone?

A. We adopted that plan for the reason that they could witness for one another, and, also share in the expenses, and in that way we could make the trip cheaper.

Q. Now, you spoke yesterday of asking people,

(Deposition of John I. Wells.)

or rustling people to make timber and stone entries. What interest did you have in inducing people to make timber and stone entries?

A. My location fee.

Q. Did you have any other interest in it?

A. No, sir, not at the time, except the ones that I loaned money to; I had an interest afterwards in collecting the money.

Q. Did you at the time of requesting people, or soliciting people to enter timber and stone claims, make any representations to them whatever as to the amount they could make out of it, or as to any person being ready to buy it?

A. No, sir, I did not, there was no one that I knew of to buy them in the vicinity where those locations were made, when they were made.

Q. At the time the Crooked River locations were made, did you know that the Barber Lumber Company, or John Kinkaid or any other person was going to be in the market to buy them?

A. No, sir, I did not.

Q. Did you have any conversation with any representative of the Barber Lumber Company, or Mr. Steunenbergh or with Mr. Kinkaid, or with any other person with reference to their becoming purchasers of the claims you had located, at the time the locations were made?

A. Not at that time; no sir. Afterwards I aided Dockery with information whereby he got a party out there to look over the Crooked River country with a view to buying it, and he came out and looked

(Deposition of John I. Wells.)

it over and turned the deal down.

Q. And who was the party which Dockery induced to look it over?

A. His name was Baker; I don't know his initials, but he is up at Saginaw, now, up in Minnesota.

Q. Did you know Norman H. Young?

A. Yes, sir.

Q. Do you recall the fact of your leaving some money with him for his deed? A. Yes, sir.

Q. Will you state how that came about?

A. I was going up in the Boise Basin in some business interests of my own, and Mr. Pritchard asked me to buy Mr. Young's timber claim, and he gave me \$700. I took it up there and gave it to Young; there was no notary public up there except him, and he said he would execute it and send it down.

Q. Do you know anything more about it?

A. Nothing more than that.

Q. Mr. Wells, it is charged in the complaint in this action that you entered into an arrangement or agreement with the Barber Lumber Company, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer, and Horace S. Rand for the purpose of defrauding the United States out of the amounts described in this complaint; did you have any arrangement of that kind, or similar kind?

A. Not of any kind; I had no intention of beating the United States out of anything.

Q. Did you ever have any arrangement with any

(Deposition of John I. Wells.)

of the gentlemen I have named with reference to lands in the State of Idaho, other than that you and Patrick would locate people on the ground?

A. No, sir.

Q. Have you testified about all of the arrangements you have had, in the order you made them, and your part in locating people on the claims?

A. As near as I can remember.

Q. Did you ever, at any time, solicit, request or induce any entrymen or entrywomen to testify falsely before the Land Office relative to the claims they entered?

A. No, sir, I never did.

Q. Do you know of any of the other defendants having done so?

A. No, sir.

Q. Did you at any time, alone, or in connection with Mr. Downs, procure or induce any entrymen or entrywomen to file upon timber lands in the State of Idaho for the benefit of any of the defendants in this action?

A. No, sir.

Q. Did you procure, induce or request any applicant to enter upon lands pursuant to any agreement by which they were to transfer, or turn over the lands they might acquire, to any persons, firm or corporation?

A. No, sir.

Q. Did you know to whom any entryman or entrywoman was going to sell their lands at the time you located them?

A. No, sir.

Q. Did you have such knowledge as to any entryman or entrywoman at the time you made a loan to them for Mr. Sweet?

A. No, sir.

Q. Do you know why Mr. Sweet did not make

(Deposition of John I. Wells.)

these loans directly himself?

A. No, unless it was because I was acquainted with the parties that had filed, and they were coming to me in regard to the loans and Sweet seemed to be willing to trust me to loan this money.

Q. There was no connection between you, or the firm of Wells and Downs, and these original entry-men who came out to the Basin from Minnesota, Messrs. Parris & Manning? A. No, sir.

Q. I understand they were the first persons who appeared in Boise for the purpose of locating people?

A. They were the first parties who succeeded in getting people to file on lands in the Boise Basin.

Q. They only stayed a short time, I understand?

A. Just about thirty days, and during that time they brought three or four different loads of people up there to view this timber, and about half of them filed on land, and the other half didn't like the timber and never filed, I learned afterwards.

Q. Now, you say it was assumed,—you heard that Parris and Manning made certain representations in the Basin with reference to prospective purchasers?

A. I heard that?

Q. State whether that was the general talk among the placer miners up in the Basin?

A. It was the talk, and newspaper reports were made to that effect. I think Manning was the dictator of those reports, he gave out the information.

Q. Now, did you at any time make any arrangements or have any business connections with Parris

(Deposition of John I. Wells.)

and Manning, or any other locators other than Patrick Downs?

A. No, sir. Except Snow; a bunch of applicants had come to me and wanted to know if I could locate them, and I told them that Downs was up there and that we could divide the location fee; outside of that, I had no arrangement.

Q. Were you ever employed by Frank Steunenberg in any capacity during the years 1901 up to 1905?

A. I believe that I made a trip up near Center-ville to look after a fire that had broke out up there for Frank Steunenberg for which he paid me. If there was any other employment, I don't recall it.

Q. Were you ever employed on a salary or by a commission with reference to any of the lands described in this complaint, by the Barber Lumber Company?

A. None other than I have already described, collecting the money.

Mr. BUNDY.—That is all.

Cross-examination.

(By Mr. GORDON.)

Q. Mr. Wells, you were present at all of the sessions of the taking of the testimony in this case at Boise, were you not?

A. Yes, sir, very near all of it.

Q. And you have been in consultation and conference with Mr. Bundy, the counsel of the Barber Lumber Co., concerning these cases, and the testimony of the various witnesses, have you not?

(Deposition of John I. Wells.)

A. We have talked about the case, yes, sir. I have been with Mr. Bundy when I was in the same town with him.

Q. And during the taking of the testimony of the various witnesses you discussed with Mr. Bundy the testimony of each witness?

A. Yes, I did to a certain extent.

Q. What is your occupation now, Mr. Wells?

A. Well, I have been—really I haven't any occupation, only as what you would call a curbstome real estate man.

Q. You haven't been in office? A. No, sir.

Q. Haven't got any trade?

A. No, sir, I have no trade.

Q. And how long has it been since you have been employed?

A. It has been about—outside of what I have already testified, I haven't been working for anyone for a salary or a commission since about the middle of August, 1901.

Q. 1901? A. Yes, sir.

Q. And at that time you were working in a mine, were you not? A. Yes, sir.

Q. As a laborer? A. Yes, sir.

Q. What were you paid for that service?

A. \$3.00 a day.

Q. And you have testified that at that time, or about that time, you were interested in a saloon?

A. Yes, sir.

Q. Where was that saloon?

A. Centerville.

(Deposition of John I. Wells.)

Q. And you were interested in it with your brother? A. Yes, sir.

Q. Harvey Wells? A. Yes, sir.

Q. And to what extent was that interest?

A. My brother wanted to buy the saloon, and he had about half enough money to buy it, and I put up the other half.

Q. How much was the other half?

A. It cost us \$600, \$300 for a license, and we had to put in the stock and pay some rent in advance.

Q. Is that saloon still in existence?

A. I don't think there is any saloon there, but the building is still there.

Q. You are not interested there now?

A. No, sir.

Q. Did you sell it out, or did it just naturally discontinue?

A. My brother made a little money there, and he paid me half of the profits until I left. I think it was in September; no, it was about December that he paid me half the profits and my money back.

Q. December of what year? A. 1901.

Q. Do you own any real estate?

A. At the present time I own an equity in my home in Boise City.

Q. And approximately, what is the home worth?

A. About five thousand.

Q. And how much is the equity?

A. It is probably worth—about \$2,000.

Q. What has been your purpose in attending the sessions of the taking of the testimony in this case?

(Deposition of John I. Wells.)

A. No purpose of my own; Mr. Bundy asked me and requested me to attend those sessions.

Q. You are not a lawyer, are you?

A. No, sir.

Q. Are you paid a salary or a fee or were you paid a salary or a fee for attending those sessions?

A. He paid me for my time.

Q. Who advised you that you were to be a witness in this case?

A. I think Mr. Kinkaid told me that I was expected to testify after I arrived in Los Angeles.

Q. And you came to Los Angeles in response to a telegram from Mr. Kinkaid?

A. Yes, sir. That is, I concluded that it was for me to come, it didn't say come, but he telegraphed what train he would be on at Reno, and I knew that you people would be here about the third, and when I bought my ticket I bought a round-trip ticket, and I figured if I went to Reno I would go to Los Angeles, anyway, I wanted to see the country, and it was just as cheap to buy it to Los Angeles as to San Francisco.

Q. Did you come by way of Frisco?

A. Yes, sir, that is, my ticket called for by way of Frisco, but I switched off at the Oakland Pier, I didn't go into Frisco.

Q. Didn't Mr. Bundy at any time during your conferences with him state that he expected you to be a witness?

A. No, he never said that he expected to put me on the stand at all; but he did infer, before he left

(Deposition of John I. Wells.)

Boise City that he might want me to come down to Los Angeles.

Q. How long was that before he left Boise City?

A. Just the day before, or maybe at the train.

Q. Do you remember when the timber in Boise Basin, Idaho, was first opened for entry?

A. In Township 7-5 it was surveyed the spring or summer that I landed in the Basin; I remember that distinctly, because the surveyors one morning before I got up, I was sleeping in a little tent, and a chain or something rattled against it, and I stuck my head out, and a surveying outfit was dragging their chain along.

Q. That was a Government Surveyors?

A. Yes, sir.

Q. When did you begin to locate people in the Boise Basin? A. In the fall of 1901.

Q. And the persons that you located, were they the first persons that made entries in the Boise Basin?

A. No, sir, there had been a few before that. A few had been made by Downs & Snow, acting for Parris & Manning. I think Downs and Snow, and a fellow by the name of Hamilton, and a lady by the name of Julia Anderson, and a lady by the name of Thompson, and one or two others, had filed before I located anybody.

Q. That was five or six persons?

A. Yes, sir.

Q. And did I understand you to say that they had been located by Downs and Snow?

(Deposition of John I. Wells.)

A. Yes, and Manning. I understood that Manning brought them out there, also brought Downs and Snow, brought them up there to file on timber.

Q. Did you ever meet Mr. Manning?

A. I met Manning, I think once, and I think it was at the time that I first came down to Boise to investigate what the Timber and Stone Act really was.

Q. And did you go to Mr. Manning to make your inquiry?

A. No, I went to the Land Office, but I called on Mr. Manning at the Capital Hotel during that trip.

Q. Mr. Manning was a lumber or timber man from Minnesota, was he not?

A. I think he was from Minneapolis, he told me.

Q. And was he a lumber man?

A. He seemed to talk lumber pretty good, that is all I know about it.

Q. How many timber claims were entered in the Boise Basin prior to January, 1902?

A. Why, I think somewheres near fifty had been entered altogether.

Q. And had any one located entrymen other than what you have referred to as the firm of Downs & Wells?

A. Yes, sir, a gentleman by the name of Nelson, I met him once I think.

Q. Is that Joe Nelson or Charlie?

A. I think it was John.

Q. How many people had he located?

A. I can't recollect, but not over four or five.

(Deposition of John I. Wells.)

Q. That was four or five that was located by Mr. Nelson? A. Yes, sir.

Q. And then the four or six that were located by the Manning outfit? A. Yes, sir.

Q. Did anyone else locate anybody in the Basin?

A. Any time?

Q. Prior to 1902?

A. Not that I know of.

Q. Then you and Mr. Downs located about 40 persons prior to January 1st, 1902?

A. Yes, sir.

Q. Did you locate people in the Boise Basin after January 1st, 1902? A. Yes, sir.

Q. How many other persons did you locate in the Boise Basin in the year 1902?

A. I think all together, including the ones that we located in 1901, there were about 100, maybe 110 or 112. You see, Mr. Gordon, over at Idaho City there were some located in the summer of 1902, that we located, but that is away across the country, over in the 6-4, but it is in the Basin proper.

Q. Did you and Downs have any written partnership agreement or was it just a verbal agreement that you entered into? A. Just verbal.

Q. And you were to locate people and divide the profits?

A. Yes, sir, divide the location fee.

Q. Now, I understood you to say that from August, 1901, up until the first of January, 1903, you and Downs located upwards of 120 persons in that basin; is that correct?

(Deposition of John I. Wells.)

A. Well, we located a lot in the Crooked river country.

Q. I will change my question. You located about forty between August, 1901, and January 1, 1902?

A. Yes, sir.

Q. Just how many people did you locate in the Boise Basin during the year 1902, January 1st, 1902, until January, 1903?

A. I think somewheres about 120, 117 or 120.

Q. That would make 160 that you had located in the Boise Basin?

A. No, I mean all together including the 40, in the year 1901.

Q. Then from August, 1901, to January 1st, 1903, you had located how many in the Boise Basin?

A. I think somewheres about 120, all together.

Q. Now, during that time did you and Downs locate persons on timber claims in other sections of the country?

A. In the fall of 1902 we located lands in 7-8, 8-8 and 6-8.

Q. That is what you call the Crooked river country? A. Yes, sir.

Q. And prior to January, 1903, how many persons did you locate in the Crooked river country?

A. Between 85 and 95, I think.

Q. And how much did you get for locating each of those claims from the entrymen?

A. I got \$12.50.

Q. And Downs got \$12.50? A. Yes, sir.

Q. Did you have any other business at that time?

(Deposition of John I. Wells.)

A. Well, I was pretty busy at that time. I was mining a little, getting some assaying done, and helping fellows sell their mining property.

Q. Were you making any money at that time?

A. Yes, sir; I made a little money at that time selling mining property.

Q. What mining property did you sell from August, 1901, to January 1st, 1903?

A. I sold my claims in Lewis Gulch in the fall of 1901, and I think in the fall of 1902, maybe in the spring of 1903, I sold the Twin Sisters mine.

Q. Did you own the Twin Sisters mine?

A. No, sir; I had an option on it.

Q. How much did you clear on that?

A. \$1,000.

Q. And how much did you clear out of your other claim?

A. \$600; it was just a prospect, for my share I got that; I had a partner in that with me, Mr. Glass.

Q. Thaddius N. Glass?

A. Yes; I located him in and sold him out.

Q. And that \$1,600 that you made, didn't have to be divided with Mr. Glass?

A. No, that was my own money; afterwards Ingles had a partner and he wanted to get rid of him, and he told me what I could buy it for, and I bought for a couple hundred less, and so I made, counting it all together, I made \$1200.

Q. This firm that you spoke of was never known as the firm of Wells and Downs?

A. Everybody knew that me and Downs were

(Deposition of John I. Wells.)

partners in the locating business that knew anything about it at all.

Q. The business was run under your name, was it not?

A. We didn't have to do any banking business or anything of that kind together because Downs when he came down out of the hills, I generally had his money ready for him and gave it to him.

Q. You didn't do any banking business at all?

A. I did have a bank account at the Bank of Commerce for probably two years.

Q. At about this time 1901 and 1902?

A. I think so; I think it was in 1902 and 1901.

Q. None of these transactions that you conducted in reference to the timber claims were carried on through the banks, were they?

A. Nothing that I did.

Q. You never gave your check?

A. No, sir; only I might have had a bank account in the Bank of Commerce, and paid my individual bills with checks.

Q. I mean any of the money you loaned persons to prove up with, or anything with reference to timber claims, you never did it by checks?

A. No, sir.

Q. You and Downs didn't have any letterheads or stationery with the firm name on it?

A. No, sir.

Q. You had stationery of your own? "John I. Wells?"

A. Yes, room 8, Park Building.

Q. Now, you say that sometime in 1901 you

(Deposition of John I. Wells.)

learned from the Boise papers that a railroad was going to be built somewhere in Idaho, is that correct?

A. The papers stated that there was a surveying party surveying from Boise up to the mouth of Grimes creek and Moores, which I found out afterwards was true.

Q. And there had just been a survey made?

A. They started boosting it when they first started.

Q. Who started to boost it?

A. The papers.

Q. In what manner did they boost it?

A. They talked about the railroad going up and tapping the basin country and there was a good deal of talk of it being a great benefit to Boise City and the surrounding country.

Q. Has a railroad ever been built there?

A. No, sir.

Q. Has anyone ever started to build up there?

A. There is a railroad graded about 12 miles from Boise City up.

Q. Up to where?

A. Probably four miles to the Government dam.

Q. And how far is that from the Boise Basin?

A. It is about 12 miles, that makes it about 30 miles yet to Boise Basin.

Q. And there is a chute to the Government dam a little further on? A. Yes.

Q. And do you know what the purpose of that railroad was?

(Deposition of John I. Wells.)

A. It was supposed to be a Butte and Boise railroad.

Q. You spoke of some company being incorporated; did I understand you to say that?

A. Yes, the papers stated that; that is where I got my information.

Q. When did the papers make that statement?

A. Along in about July or August.

Q. Of 1901? A. Yes, sir.

Q. And did it say who composed this company?

A. Yes, sir; it mentioned their names.

Q. Who did it mention?

A. E. H. Beggs, E. E. Garrett, Ormand M. Ruick, Surveyor Stevenson and I think James Pinney.

Q. What did it say that these people had done?

A. That they had got together and organized a company and put up money, enough for this survey, and I afterwards rode down to Idaho City with Mr. Beggs and he said that he was interested in the railroad, and that looked good to me as he owned the stage line and had operated it for years, and I asked him if that would not interfere with the stage business and he said there was always a stage line to run out and he said that a new country was always better staging.

Q. You said you met these gentlemen who made the survey at your brother's place of business every day? A. Oh, no, not every day.

Q. You saw them often?

A. Yes, frequently if they were in in the evening; every evening that they were in.

(Deposition of John I. Wells.)

Q. Who were these gentlemen who made this survey, that you met at your brother's place of business?

A. Harry Curtis was making the survey; he was running lines in this timber; Downs and Snow were timber cruisers.

Q. I am speaking about making the survey for the railroad.

A. Oh, I never met anybody making the survey for the railroad.

Q. Did you ever see anybody making that survey for the railroad? A. No, sir.

Q. And you were up in that country off and on for a number of years?

A. I was above the—Centerville is about 18 miles above the mouth of Grimes creek, and that is where I lived ever since April, 1895, until I moved to Boise in the spring of 1902.

Q. You made a filing in the basin in September, 1901, didn't you? A. Yes, sir.

Q. For yourself? A. Yes, sir.

Q. And your wife made one at the same time?

A. Yes, sir.

Q. Your wife is Jennie E. Wells?

A. Yes, sir.

Q. And you sold that claim, did you not?

A. I sold my claim, yes, sir.

Q. Has a patent ever been issued on that claim?

A. Not up until the time I sold it.

Q. And how many deeds did you make to that claim? A. I made one.

Q. Never made another? A. No, sir.

(Deposition of John I. Wells.)

Q. Are you quite sure about that?

A. Yes, sir. I am sure of it; I was held up for one year after the land office at Boise had ordered the issuance of my final receipt. It was not issued until the year afterwards; I found that out.

Q. My inquiry was directed as to whether or not you made a deed to A. E. Palmer for the land that you filed on in 1904?

A. No, sir, I never did.

Q. Nor to anybody else?

A. No, sir, none except the first deed.

Q. And the first deed that you made was the one that you made to Palmer at the request of Mr. Chapman of the Barber Lumber Company?

A. I never made a deed to Palmer.

Q. The deed was to the Barber Lumber Company? A. Yes, sir.

Q. That is the only deed that you ever made at any time for the piece of property that you filed on?

A. Yes, sir; that is the only deed.

Q. Do you remember when you made final proof?

A. Yes, about when.

Q. When was that? A. December 12th.

Q. 1901?

A. 1901; two or three days after the date set by the land office for me to make proof.

Q. Do you remember why you didn't make proof on the date?

A. I didn't have any witness; I didn't have Granger down there.

Q. And you borrowed all or part of the money

(Deposition of John I. Wells.)

by which you made your final proof from William Sweet? A. Yes, sir.

Q. About \$130? A. About that.

Q. And you made your proof when Mr. Granger made his? A. Yes.

Q. And you loaned him part of the money with which he made his proof? A. Yes, sir.

Q. That was your own money?

A. Yes, and I got the money from Sweet that I needed. That is the way that I remember it now, I don't know, but I borrowed the money from Sweet when I made proof.

Q. You mean that it didn't make much difference if you had to borrow it, whether you loaned him the money you borrowed, or not? A. Yes, sir.

Q. How much did you loan Arthur Anderson, to make his final proof?

A. I think it was \$250.

Q. Where did you get the money that you loaned Anderson?

A. That was my own money that I loaned; I made it by locating people and selling my prospect.

Q. Did you ever go to Mr. Kinkaid with Anderson and Nugent? A. No, sir.

Q. Did you ever meet them there?

A. No, sir, I don't think I ever did.

Q. Are you sure of that? A. Yes, sir.

Q. Did you have anything to do with the contests over the claims of Arthur Anderson, Albert P. Nugent, James T. Ball and Harvey H. Wells?

A. Yes, sir; I aided them all I could for the rea-

(Deposition of John I. Wells.)

son that I had something like \$800 or \$900 invested with them.

Q. Did you secure counsel for them when their claims were held up?

A. Yes, sir; me and my brother telephoned backwards and forwards and I think I wrote him, and my brother told me to do what I could down there and I done what I could, and I told him to have the others go to the counsel that I recommended.

Q. Did you recommend Harry Worthman?

A. No.

Q. Did you recommend Frank Martin?

A. No, sir.

Q. Did you employ Frank Martin for them?

A. No, sir.

Q. Did you ever have any conversation with Frank Martin regarding employment?

A. When they came down,—that contest was set for a certain time, and when they came down to make their proof Worthman was busy and he could not take it up and so he got Frank Martin, and I understand he said he would handle the case. Before Frank Martin took the case, he took one of those fellows in his office, and made an agreement with them that if he won the case they were to pay him so much money.

Q. Did you see them in his office?

A. Yes, I was with them.

Q. Did you take them there? A. Yes.

Q. Why did you take them to Mr. Martin's office?

A. Mr. Worthman said Mr. Martin had the case.

(Deposition of John I. Wells.)

Q. You were present in court when Arthur Anderson testified in this case? A. Yes, sir.

Q. And you heard some letters read to Arthur Anderson purporting to be written him by you?

A. I don't recall hearing any letters read.

Q. You remember writing Anderson those letters with reference to the employment of counsel for those contest cases?

A. No, as I understand it, I wrote to my brother and told him to see Anderson.

Q. Don't you remember writing to Anderson?

A. I don't remember.

Q. Do you remember writing to Nugent?

A. Yes, sir, at Silver City.

Q. And do you remember telling Nugent to say nothing about that to anybody, to destroy the letter?

A. I think so.

Q. What was your purpose in telling him that?

A. I had loaned him some money and I didn't want to lose it.

Q. How did you think that would make you lose your money?

A. There was an Examiner, as I understood it, had interviewed Nugent and Nugent had told him that he had borrowed the money from me I believe, and a whole lot of other stuff.

Q. Where did you hear that?

A. From people in the Basin; my brother got the information up there; and several others talked about it.

Q. At that time you thought it was illegal for

(Deposition of John I. Wells.)

people to make final proof with money that was not their own? A. No, sir.

Q. You had taken advice on that subject?

A. No, sir. I have lived on the frontier all my life, and I have never known the time that a man could not borrow money to commute.

Q. Did you think it was illegal for you to loan people money to make final proof if you had located those people yourself? A. No.

Q. Did Mr. Kinkaid advise you to that effect?

A. He advised me that I had a perfect right to loan them the money. He said, "You are a locator," and he says, "The inference will be drawn if anything ever comes up in this thing that you was interested in this buying and purchasing of claims," he said that everybody would *a* running after me to borrow money.

Q. Mr. Kinkaid advised you not to loan money to make final proof, if you had located the people, didn't he?

A. No; he said it might—the inference might be drawn because I had located them, that it was illegal.

Q. Who said that, Kinkaid? A. Yes.

Q. Mr. John Kinkaid? A. Yes.

Q. The gentleman that is now present here?

A. Yes, sir.

Q. Didn't I understand you to say yesterday that Mr. Kinkaid told you not to lend money to persons that you had located if they were going to use that money to make final proof, but that you did loan

(Deposition of John I. Wells.)

money to them?

A. I loaned two fellows money, and afterwards loaned a whole lot of money to make final proof.

Q. When did you meet William Sweet?

A. First time?

Q. Yes.

A. I met him sometime during the summer of 1895 when I first went into the Basin.

Q. And the first dealings you ever had with him in reference to timber claims were when you borrowed the money to make your proof, or a loan to Mr. Granger that you have referred to?

A. Yes, sir.

Q. And that was in December, 1901?

A. Yes, sir.

Q. And when did you make the arrangements with him by which you could get the money from him to loan other persons who desired to make final proof?

A. I think it was in the early part of January, 1902.

Q. And I understood you to say that you thought Sweet's purpose in loaning that money was that he eventually expected to acquire it and he had some lumber company who might want to purchase it?

A. Yes, sir, I believe I said something to that effect.

Q. Sweet never got any interest out of this money, did he? A. No, sir.

Q. There never was any agreement with any of the persons that borrowed the money that they were

(Deposition of John I. Wells.)

to pay interest, was there? A. No, sir.

Q. Now, the forty people that you located prior to January, 1902, did I understand you to say that you only assisted two of them in making the final proof?

A. Oh, no, I assisted pretty nearly all of them that were located in the spring of 1901.

Q. And where did you get the money to do that?

A. From Sweet, except the Nugent and Anderson claims, and then I took my money.

Q. I understood you to say that you didn't make an agreement with Sweet until January, 1902?

A. Those people that were located in the fall of 1901 didn't prove up until after January.

Q. And now do you remember the names of those 40 people whom you located, and to whom you loaned money to make final proof?

A. I could not recall all of them.

Q. Will you make a try at some of them?

A. Yes, I can name some of them.

Q. I will ask you to look at the bill filed in this case and over towards the end of it you will find the list of the entrymen, and see that, if by reading that over, you can name the persons to whom you loaned money to assist them in acquiring title to the claims they located.

A. I will do the best I can. (Reading bill.) Dean West, Eliza B. West, Charles Nelson, William Pearson, Margaret Pearson, Lelia Lee, Arthur E. Brockhart, Gustave A. Link, Mary Link, Harry L. Kline, Louis Nibbler, Edward Brisban, William W.

(Deposition of John I. Wells.)

Abrams, a part of Homer C. Granger's, Louis K. Burns.

Q. And Dora Burns?

A. Yes, I loaned her money. I believe that I loaned W. L. Harrison part of his money either before or after he made proof.

Q. Do you remember how much?

A. Something like \$200.00, I don't know exactly. Charles W. Ballentyne, Lettie S. Stevenson, Martin S. Stevenson, Arthur Gillan, Samuel Greig, and Sarah Greig, Ery A. Wilmot, and I think I loaned Wilber F. Wilson part or all of his money. Sedgwick Hoover, John E. Hobbs, Mary Thompson; I think that is all.

Adjourned at 2 P. M.

At two o'clock, met pursuant to adjournment. Counsel for parties being present, whereupon Mr. John I. Wells proceeded to testify as follows:

(By Mr. GORDON.)

Q. Now, Mr. Wells, I think the question I asked you just before recess was directed to the persons you had furnished with money and who you had located in 1901; did your answer or the persons that you named apply to entries that were made in 1901 or all that were included in the bill?

A. All that were included in the bill. All the names that I could recall.

Q. And as for the rest in that bill, other than those you have named, you never loaned any of your money or gave any of your money as a loan, or in any other way to assist them in acquiring this land,

(Deposition of John I. Wells.)

or the timber land that either or any of them located on; is that correct?

A. To the best of my memory, that is correct.

Q. Do you remember the Joplin boys?

A. Yes, sir.

Q. Did you ever loan them any money?

A. I don't think so.

Q. Are you sure of that?

A. At the present time, yes, sir.

Q. Ever loan Mrs. Sonora Joplin any money?

A. No, sir, not to the best of my knowledge at this time.

Q. Now, tell us what you thought the land on which you located these people was worth?

A. I think it was worth about 50 cents per thousand at the time I located them. I am not speaking of the Basin entries.

Q. And you base that on what?

A. Well, some of the State land had sold for that.

Q. And you used the expression that you thought "our land was just as valuable as theirs?"

A. Yes.

Q. And you used the expression,—“our,” meaning that you and Downs had cruised, is that correct?

A. I mean the ones that I had found and when I said “ours” I meant all the entrymen that had filed, and I counted my own claim and my wife's.

Q. I understood you to say that when you located these people that you didn't intend to buy the claims that you had no funds with which to buy them; is

(Deposition of John I. Wells.)

that correct? A. Yes, sir, that is correct.

Q. And that you never told anybody what you thought these claims were worth?

A. Well, I believe in order to encourage them to file that I told them that I thought it ought to bring 50 cents per thousand.

Q. And you knew of no market at that time?

A. No, sir.

Q. You gave as a reason for making your arrangements with Sweet to borrow money for these entrymen, that you felt under some obligations because you had had them locate, is that correct?

A. Yes, sir.

Q. And that some of them had threatened to come back on you?

A. There was talk of that; they felt as though I had beat them out of that much money, and that the land would never be salable and that they didn't feel like putting their money into it, but if they could borrow the money, why they would take a chance to prove up.

Q. In other words, then, if it was not good they didn't intend to pay the money that they had borrowed?

A. No, I didn't understand it that way; they thought if they could borrow the money the land would be good for it, and let it rest at that, and if it did get more valuable they would sell it and make some money out of it.

Q. Did the firm of Downs and Wells ever receive a location fee from Harry Kline?

A. No, sir; they did not.

(Deposition of John I. Wells.)

Q. Did you ever collect \$25 from Harry Kline?

A. Yes, sir.

Q. What for?

A. For the use of money that I loaned him; he also paid me \$5.00 for the use of \$50.00 that he borrowed.

Q. How much money did you loan him?

A. I loaned him \$400, I think.

Q. And whose money was that?

A. Sweet's money.

Q. And when did you charge him that? After he had sold his claim?

A. At the time he sold his claim.

Q. Were you at all alarmed at those threats that you had heard made that they might come back on you for the \$25?

A. It was not so much that I was alarmed about hearing that, but it was that it would interfere with the locating the balance of that country, for instance, if 35 or 40 had filed on land and failed to make final proof, why they would think there was something wrong, and no more would locate.

Q. When did you say you first met Governor Frank Steunenberg with reference to these timber claims?

A. I think I met him at the Idenha Hotel.

Q. When? A. About the first of June.

Q. What year? A. 1902.

Q. And was that the first business transaction you ever had with Mr. Stuenberg?

A. Yes, sir.

(Deposition of John I. Wells.)

Q. I notice in the bank statement in this stipulation, and item of May 12, 1902, amount \$20.00 of John I. Wells, check drawn by Mr. Stuenberg Frank Stuenberg; do you remember receiving that check? A. No, sir, I do not remember.

Q. Do you know what that check was for?

A. I remember of a check of \$18.00.

Q. I show you a check on the Commercial Bank, dated May 15th, 1902, to the order of John I. Wells, signed Frank Stunenberg, and ask you if you endorsed that check, and if that is your signature, and whether you received the \$20.00 in payment of it? (Showing witness check.)

A. I must have gotten \$20.00 for it.

Q. That is your signature?

A. Yes, sir; it might have been for examination, or something in regard to plats, or something of that kind.

Q. I notice here an item, dated April 19th, 1902, the statement shows to John I. Wells for account of Kinkaid, \$825, "no check, not on bank statement." Do you remember anything about a check of that kind?

A. I don't remember of ever getting a check for \$225.

Q. The amount *if* \$825.

A. I don't remember getting that from Frank Stunenberg at no time.

Mr. GORDON.—I offer in evidence check dated May 15th, 1902, which is for \$20.00 and identified by the witness John I. Wells, marked "Complainant's

(Deposition of John I. Wells.)

Exhibit John I. Well, No. 1."

WITNESS.—(Continuing.) I believe I recall that check; I received it in a letter and I ain't right sure but what I have got the letter that that check was sent to me in, and I think it was to pay Davis for some work that he had done, and they mailed it to me.

Q. Do you remember that the only timber claim that you bought was from a man by the name of John J. Keane? A. Yes, sir.

Q. Was Mr. Keane a bar-tender at that time?

A. No, sir.

Q. He was when he located?

A. Yes, when he filed on the land.

Q. And now when was it that you bought this claim from Keane?

A. It was long before June.

Q. Of what year? A. 1902.

Q. How much before June?

A. Well, probably it might have been a couple of weeks and it might have been—it was not much more than a couple of weeks.

Q. And had you loaned him the money with which to make proof? A. Yes, sir.

Q. You loaned him four hundred and some odd dollars? A. Yes, sir.

Q. And that was not in part payment of the sale of that timber?

A. Not at that time that I loaned it to him, no, sir.

Q. And there was no agreement or understanding that he was to subsequently convey it to you, was

(Deposition of John I. Wells.)

there? A. No, sir.

Q. And how much above what you loaned him, did you pay for this timber claim?

A. Why, I don't know exactly, but it was something like \$237.50 I think; it might have been \$250, it might have been less.

Q. And as I understand it, he made out a deed to you conveying it to you fee simple?

A. Yes, sir.

Q. And you bought that for yourself?

A. Yes, sir.

Q. Not as agent for anybody else?

A. No, sir.

Q. And how long after that was it that you sold it to Mr. Stunenberg?

A. It was quite a while before I got the value of that claim, or more than I had put in of Sweet's money. The first time I ever talked with Stunenberg I told him in a joshing way that I had bought a timber claim and I asked him what it was worth and he says, "Is that one of the claims that Sweet had loaned the money through you to make final proof?" and I told him it was, and in a day or two afterwards Stunenberg came to my office and he asked me to look after those matters; he was paying \$800 for those claims, and I expected to get \$800 for the claim; after I had collected all this money of Sweet's we had a settlement and I wanted a little more money for waiting so long for my money, so he agreed to pay me \$412.50, that would make \$800 for the claim.

(Deposition of John I. Wells.)

Q. Was that the first he had ever paid you on account of that claim?

A. That was the first money that he ever paid me on account of that claim; he had the deed, I turned that over to him when he was in my office.

Q. You just handed it to him?

A. Yes, and he said he would straighten it up afterwards.

Q. How long after that was it that he asked you to go to Keane and get another deed?

A. Probably a year and a half.

Q. He didn't ask you to make a deed, did he?

A. A deed to him?

Q. Yes. A. No, sir.

Q. Now, do you remember on April 28th, 1903, of Mr. Stunenberg giving you a check for \$1600 for two claims on the Crooked River?

A. No, sir, I do not.

Q. A check for \$1600 for two titles on Crooked River?

A. I don't remember of ever getting such a check.

Q. Would you know what they were for if you should see the checks?

A. No, sir, I would not.

Q. Do you remember on June 13th, 1904, whether John Kinkaid gave you a check for \$250 or whether he paid you \$250, as part payment on your timber claim?

A. No, sir, I don't remember of getting anything as part payment on my timber claim.

(Deposition of John I. Wells.)

Q. Did John Kinkaid on June 12th, 1904, give you \$250 for anything?

A. I don't remember whether he did or not; I remember that along about that time Mr. Kinkaid and I were having different deals together, but I don't remember of this item.

Q. Do you remember ten days later, whether on June 23d, 1904, Louis M. Pritchard paid you \$162.50?

A. June 23d, 1904?

Q. June 23d, 1904?

A. No, sir, I don't recall him ever paying me that unless it was through some mining turn or other. Pritchard done a great deal of work for me in making our options and contracts in the mining business, but I don't recall any such money in the timber business.

Q. Do you recall on August 31st, 1904, of Frank Stunenberg giving you a check for \$150?

A. I believe I do.

Q. What was it for?

A. It was for outfitting on a trip into the Deadwood Basin. I got him interested in the Mary Blue mine in the Deadwood basin, and I made a trip in there at that time; I made three trips into the Deadwood basin that summer.

Q. Didn't you get \$150 just a month before that, July 31st, 1904?

A. I might of.

Q. Don't you remember it?

A. No, I don't remember that particular item.

Q. Do you know Leon S. Simpson?

A. Yes, sir.

(Deposition of John I. Wells.)

Q. Do you remember of selling him a relinquishment at the suggestion of Frank Martin, Ex-attorney General? A. No, sir.

Q. Did you ever tell him that Mr. Martin had a claim to sell and that he could get a relinquishment from him?

A. Yes, sir; he had spoken to me two or three times about getting a timber claim and I told him the first chance I would let him know; there had been a hearing on in the land office, and they had 30 days; the claims had not been canceled, they had 30 days to show cause why they should not be canceled or something to that effect. Mr. Martin had the notice, and me and him talked it over and I talked it over for the fellows that were interested and I was interested in a way myself, and Mr. Martin suggested that he had not got any pay for what he had done and there was no use in carrying it any further, but if he could get a relinquishment from the boys for his services, that he would still continue the suit, and try and get their money back. Mr. Martin and I went up to Centerville with my team and we saw the boys up there.

Q. Who were the boys? A. Al Wells—

Q. Harvey H. Wells?

A. Yes, sir, and Ed Hunter, Jim Ball, Arthur Anderson, and I assisted Mr. Martin in getting those relinquishments. Mr. Martin filed some of his people, three or more relatives of his on those claims, and also my friend Simpson.

Q. Do you remember whose claim Simpson got?

(Deposition of John I. Wells.)

A. I do not.

Q. It was one of these four? A. Yes, sir.

Q. Did you get paid anything for your services going up there? A. Yes.

Q. Who paid you? A. Mr. Martin.

Q. How much? A. \$100, I think.

Q. Was not that after the decision of the Secretary of the Interior? A. Yes, sir; I think so.

Q. And was that \$100 in part payment of your services in securing Simpson to file on that?

A. I suppose partly, but it was mostly for going up and aiding him get those relinquishments.

Q. You spoke of Brockhart, the father of Arthur Brockhart and Mrs. Lelia Stevenson; you say he was a Minister of the Gospel, was he? A. Yes, sir.

Q. And what was he doing at that time?

A. They were running a sort of a boarding-house.

Q. Boarding-house for horses?

A. No, for men.

Q. Wasn't he at that time sort of a stable boy for Stevenson? A. Mr. Brockhart?

Q. Yes. A. Not that I ever knew of.

Q. Do you know whether his name was Joshua?

A. We always called him Ed, so did his people in the East.

Q. And I understood you to say that he got \$812 from you?

A. Yes, I ain't sure that that is just the amount, but he got at least \$800, but I think it was a little over.

Q. And did he pay it back to you?

(Deposition of John I. Wells.)

A. Yes, sir.

Q. Himself? A. No, sir.

Q. Who paid it back to you?

A. Mr. Pritchard.

Q. And that was taken out when Arthur Brockhart sold his claim and when Mrs. Stevenson sold hers?

A. Yes, sir.

Q. I understood you to say that after you had a conversation with Junius Wright, that Governor Stunenberg told you not to pay that claim until later, that he wanted to talk with you about it?

A. That is not correct; I had no talk with Junius Wright just before Mr. Stunenberg told me when I got ready to pay Wright to let him know; he also said that Wright had been bothering him every time he came to town, and he was getting tired of it. Wright didn't bother me any after Mr. Stunenberg fixed it with him that time. He O. K.'d my bill and I think he told Mr. Wright, "Let Mr. Wells have what he wants, he is good for it," and Mr. Wright said, "Just as you say, Governor."

Q. Did you and Governor Stunenberg go to see Mr. Wright together?

A. We were both in the store, but I didn't go back, he just stepped back probably 20 feet.

Q. And you heard what they said?

A. Yes, I think I overheard what they said.

Q. But when the payment was made though, didn't I understand you to say that the Governor had been out of town and that you went to see him, and he said, "Don't pay him until this afternoon, and

(Deposition of John I. Wells.)

then bring him to Mr. Martin's office," or something to that effect?

A. I met him on the street; he was going up the street and I was going towards the Idenha Hotel, and I said, "I have the money to pay Wright," and he says, "Come down to the hotel sometime in the afternoon," I am not sure whether it was two or three o'clock, but it was after dinner.

Q. And you went down to see the Governor, did you? A. Yes, sir.

Q. And then what did he say to you?

A. He said, "I am just going up to Martin's office, and you can bring Wright up there, I want to talk with him."

Q. Did you go to Mr. Wright's store from the Idenha Hotel?

A. I was not at the hotel then, it was right in front of the entrance to the Masonic Block.

Q. It was not far from his store?

A. No, sir.

Q. Did you go to Mr. Wright's store from there?

A. Yes, sir.

Q. Did you get your receipt from Mr. Wright's store?

A. No, sir; Mr. Wright had the receipt written out by his stenographer; I told him that I wanted to pay it, but the Governor wanted him to come up to Mr. Martin's office, and me and him walked up to Frank Martin's office and when I paid him he signed the receipt.

Q. Who was in Frank Martin's office?

(Deposition of John I. Wells.)

A. No one except Governor Stunenberg and Frank Martin.

Q. Mr. Stunenberg was already there when you arrived? A. Yes, sir.

Q. And didn't the three of you go into the private office of Mr. Martin, one of his suite of rooms, and was it there that the receipt was handed to you and the money paid to Mr. Wright?

A. It was there that I paid Wright the money, and he signed the receipt.

Q. Now, did he sign any other receipt there?

A. He signed some kind of a paper for the Governor.

Q. And who prepared that other paper?

A. I could not tell.

Q. Was it there when you got there?

A. Mr. Stunenberg had that.

Q. Do you know what Mr. Stunenberg did with that paper? A. I do not.

Q. Did you read it? A. I did not.

Q. Do you know whether it was in typewriting or was it in pen and ink?

A. I think it was in typewriting.

Q. Was it on plain paper or was it on a letter-head?

A. I could not say as to that and the contents of the letter,—I got a fair idea of what it meant by hearing the conversation between the Governor and Mr. Wright; I was in the same room.

Q. Do you know whether Mr. Martin was consulted about the paper that Mr. Stunenberg had Mr.

(Deposition of John I. Wells.)

Wright sign?

A. I don't know whether Mr. Martin knew anything about it or not.

Q. Did you leave Mr. Wright and the Governor there together?

A. No; me and Wright walked out together and left the Governor there.

Q. You say the conversation you heard between Wright and Frank Stunenberg at the time you and the Governor went to Mr. Wright's store was to the effect that the Governor said you were all right and to let you have whatever you wanted; is that correct?

A. Something to that effect.

Q. What did you gather from the conversation you heard between Mr. Stunenberg and Mr. Wright while at Mr. Martin's office concerning the contents of the second paper that Mr. Wright signed?

A. I think it was the first paper that Wright signed.

Q. It was the other paper than the receipt that you have presented here? A. Yes, sir.

Q. Then the other paper was signed before this receipt was given, is that it?

A. Yes, sir. I drew from their conversation that Wright was signing a paper that released Mr. Stunenberg from all obligations to Mr. Wright in any transaction whatever up to that time.

Q. And there was not anything that Governor Stunenberg had said that you heard between him and Mr. Wright the day that you and the Governor were at Mr. Wright's store by which the Governor

(Deposition of John I. Wells.)

bound himself to pay any of your debts?

A. No, sir. Mr. Wright seemed satisfied with what the Governor said and I found out that Mr. Wright was doing business through the Stunenberg Bank at Caldwell; he told me that just before I called the Governor in.

Q. Why didn't you go and pay Mr. Wright your bill yourself if it was your own money, and get your receipt, without having to go to the Governor about it?

A. The Governor asked me before—he had done me a favor, and standing off Wright for me, and he asked me before I paid that bill to let him know; he had a little business with Mr. Wright himself, and he said he was bothering him every time he came to town, and he was getting tired of it.

Q. Did you get the money that you paid Mr. Wright from Mr. Stunenberg? A. I did not.

Q. Where did you get it?

A. From some of my transactions, and I have been trying to think, and I can't recall.

Q. Was it a hold-up between you and the Governor that in consideration of you paying a bill that you owed Mr. Wright, that Mr. Wright would release Mr. Stunenberg from some obligation that was not connected with you at all?

A. The way I understood it Wright was trying to hold up Stunenberg.

Q. For what?

A. For favors or something of that kind; I don't know what it was.

(Deposition of John I. Wells.)

Q. And that by reason of you paying a bill that you owed Mr. Wright, that would release Mr. Stunenberg from something that Wright held over him, in which you were not connected?

A. No, I didn't understand it that way. I understood that Mr. Wright had bothered the Governor so much about my bill because he told him that I was all right, that the Governor was getting tired of it; that is the way I understood it.

Q. Do you remember what month this was?

A. I don't remember now.

Q. It was in the summer of 1905?

A. Yes, sir; I think so.

Q. Do you know where that other paper is that Mr. Wright signed in Mr. Martin's office?

A. No, sir.

Q. Did you see what the Governor did with it?

A. He took it with him, he took it and doubled it up and I think put it in his pocket.

Q. And you and Mr. Wright went out, as I understand, and left the Governor at Mr. Martin's office?

A. Yes, sir. Mr. Stunenberg thanked him and he was very kindly towards Mr. Wright, and we walked out together and in going down the street I informed Wright that our business transactions were over.

Q. Did you ever deal with him after that?

A. No, sir.

Q. And the bill was \$437.80?

A. Yes, sir; I think so.

Q. Do you remember how much money you han-

(Deposition of John I. Wells.)

dled for these timber claims?

A. Not exactly, but it was near \$12,000.

Q. You mean for Mr. Sweet?

A. I mean for anybody.

Q. For everybody?

A. Yes; the money that I handled for Sweet amounted to about \$12,000.

Q. How much did you handle all together?

A. I handled all I got, all the location money that Downs and I had gotten I handled, practically all of it, and I also handled some of the Sweet money twice.

Q. You would collect it and then loan it out again?

A. No, I loaned it in the first place, and then I collected it back.

Q. Now, did you lose any of those short loans that you made? A. Yes, sir.

Q. How many of them?

A. About four, I guess.

Q. Who were the four?

A. William Williams and his wife, I counted them two; and Mrs. Briggs and Mrs. Burns.

Q. They are the only ones?

A. The only ones that I can recall.

Q. So, that in all you only lost about \$1600, is that correct?

A. A little more than that; the Anderson and Nugent; Nugent got \$550 of me, and Anderson got \$387. I think. Mrs. Burns borrowed \$50 after she made the final proof that I never got back.

Q. Mr. Wells, have you in the last year or two

(Deposition of John I. Wells.)

gone to any of the entrymen named in this bill, and inquired of them as to what they were going to testify to in any trial? A. No, sir.

Q. Were you in court when some of the witnesses testified that you had come to them and asked them to make a statement of what they would testify to?

A. I don't think so; no, sir.

Q. Did you keep a book account of the money that you advanced to these people? A. Yes, sir.

Q. Have you that book account with you?

A. No, sir.

Q. Do you know when Mr. Sweet sold out, got out of this business?

A. About sometime in the fore part of April, 1902.

Q. Now, where was it, and when was it that you had your talk with Mr. Sweet about collecting this money and being allowed what you could make out of it?

A. I never had such a talk with him, about collecting anything for him.

Q. Who did you collect it for?

A. I was collecting this for Mr. Stunenberg when I commenced collecting it.

Q. Mr. Stunenberg was buying all the interest that Mr. Sweet had in it, whether it was title, or whether it was a loan?

A. I don't know anything about the deal between Stunenberg and Sweet; I know that Sweet came to me and he told me that he had sold out; that he did not make what he wanted to make and he said, "You

(Deposition of John I. Wells.)

loaned this money of his, you collect it in and probably get something for your trouble."

Q. Did he tell you to turn it over to Mr. Stunenberg?
A. No, sir.

Q. Who told you to turn it over to Mr. Stunenberg?
A. Stunenberg, himself.

Q. Now, you and Downs entered into a partnership in August, 1901, or along in the summer of 1901, is that correct?

A. No, it was the latter part of September, or fore part of October, 1901, that me and Downs entered into a partnership.

Q. And how long did that partnership continue?

A. Until the spring of 1903.

Q. What part of the spring?

A. About June, I believe.

Q. And why did you dissolve?

A. There was no more timber to locate.

Q. And then you resumed your partnership later, did you not?

A. Oh, well; if we heard of any timber we got out to rustle a party, and I would send Downs up.

Q. I understood you to say that later in the last two or three years, you and Downs had located a number of people, and had gotten \$125 for each claim he located.

A. Yes, sir; we located a number of people in 5-3 and 6-3, and I want to change the answer to the question Mr. Bundy asked me regarding locating in the basin. I believe the question was if we ever located anyone else after a certain time in the basin, and then

(Deposition of John I. Wells.)

I made answer about 5-3 and 6-3; we did locate four claims in the basin just before we located those claims in 6-3 and 5-3; the parties we located were Jesse B. Hawley and a fellow by the name of Clark, and John English, and his wife, and Miss Margaret Scully.

Q. She is the daughter of the old lady?

A. I think so; she works in the "Mode" that dry-goods store.

Q. When was it that you and Downs resumed your operations as locators?

A. After we got our money pretty much all run down we hadn't much money, and whenever we found a few claims we went and located. Downs was in the saloon business 8 or 9 months after he sold out his saloon we got to locating again together.

Q. In other words, after Downs had run a saloon for 8 months, you had to go to work again, is that it?

A. That is it.

Q. Were you in the saloon business?

A. No, sir.

Q. Did you work while Downs was running the saloon business?

A. I was not idle all the time.

Q. Now, had Downs been cruising up there in the 6-4 prior to the dissolution of your partnership?

A. I don't think so; no, sir. He had been through that country and I know we often talked about 6-4 going to open for entry sometime as it had been surveyed.

Q. Do you remember preparing for any entrymen any of the papers in 6-4?

A. No, sir; I do not.

(Deposition of John I. Wells.)

Q. I understood you to say that Sweet was not to receive any interest or money for the loan of this money that he had put out through you.

A. After he sold out he seemed to be satisfied with his deal, but he seemed to be a little bit anxious for me to make some money some way without him giving up any money.

Q. It was not incumbent upon you to pay him any interest upon that money and persons who borrowed it had no agreement to pay any interest on the money? A. No, sir.

Q. You said that when you asked Sweet to loan you that money or advance it that he said that he had the money, but he would have to get some legal advice on the subject.

A. Yes, and think it over; he took a day or two anyway before he gave me an answer; he said he liked the scheme all right.

Q. What was the scheme, if he was not to get any interest on his money?

A. If he loaned the people this money he would have a lien on all the people that he had loaned money to, and they would be morally obligated to do business with him if he wanted to buy the land in the future, or do something with it in the future.

Q. Do you remember how much money you paid Dean West? A. What for?

Q. The services that he did for you in handing this money out and getting people to locate?

A. I believe that West, in a few instances, charged the fellows something for giving them this money; I

(Deposition of John I. Wells.)

don't think I ever paid West anything for handing people their money.

Q. Are you sure of that?

A. I am sure of that.

Q. Did you hear Mr. West testify?

A. Yes.

Q. Did you hear him testify that you gave him money to take to four people, gave him \$25.00 apiece?

A. No, sir, I never heard him testify to that; if he testified to any such thing as that it was false.

Q. You said that Messrs. Paris & Manning came out here with Downs and Snow?

A. I don't know that they came with them, but they came at the instigation of Manning, and I heard afterwards that they paid Manning something for bringing them out there and locating them.

Q. And you said that Snow was going to pitch Manning out of a window at one of the hotels at Boise, because Manning did not do what he agreed to do.

A. I understood by Snow that he was going to run a lot of applicants out there and give him a job for locating them, and the consequence was that he brought two or three loads out and they put up at the Capital Hotel and he was spending money right and left and the money that he collected, the boys didn't get anything out of it, and they had all loaned him money, and he had had them up there in camp and they were about starved to death and instead of sending them up grub he had not sent them anything

(Deposition of John I. Wells.)

and they had had to run their faces in Centerville for grub to live on.

Q. When did you meet Mr. L. M. Pritchard?

A. The first time I met Mr. Pritchard I think was in the winter of 1902, after January. I don't recall just when or how. I know that I finally got him to file on a timber claim, I got \$25 out of him, too.

Q. The expressions that you have used in your examination about claims you located, you had reference to the claims that you and Downs had located?

A. In most instances. The first five fellows that come down to the Basin Downs had nothing to do with whatever; they were friends of mine and I assisted them in getting their exact minutes and they came down and filed and come back and paid me for it. I was not in Boise at the time they filed; I was at Centerville.

Q. How did Sweet give you this money, by cash or check?

A. Well, he generally brought it to me in a roll of bills.

Q. For one or two claims at a time, or did he give it to you so that you would have it on hand?

A. I never had it on hand there long. I remember of him giving me as high as \$2000 at one time. Sweet and I used to sit on the porch at Centerville at the saloon, and he had made a raise at this time; he made a raise promoting and selling mines.

Q. Did he lose all his money the same way?

A. I believe he lost all his money in Wall Street,

(Deposition of John I. Wells.)

or in a sugar plantation in Cuba; he was interested in both.

Q. You spoke something of having heard of a general order of suspension issued by the Commissioner of the General Land Office; do you know when that was?

A. It was sometime in the winter of 1902.

Q. In the winter of 1902? A. Yes, sir.

Q. How long did that last? I mean between January and the spring of 1902?

A. It lasted until along in June, I believe.

Q. I understood you to say that about a year ago you went down and located about 27 claims in 5-3, and 6-3.

A. I think I testified that about three years ago—I did that between three years ago and up until a year ago.

Q. How far is what you call Boise Basin, from the Crooked River?

A. Those creeks divide between the basin and Crooked River.

Q. Air line, how far is it?

A. From the summit of Moores Creek over to the other side of Crooked River side, it can't be only a few miles.

Q. Three or four miles?

A. I think there is one township in between the Crooked River country and the basin proper, 6-7 laps on to Crooked River pretty well.

Q. How wide is a township?

A. Six miles. I think the last claims that Downs

(Deposition of John I. Wells.)

and me located was a year ago last fall, in 5-3.

Q. With reference to the Keene deed, who drew that first deed to you? A. Mr. Pritchard.

Q. How did you happen to go to Mr. Pritchard's office?

A. Mr. Pritchard was doing a good deal of work for me at that time. I have at my home a due bill of Arthur Anderson's for \$137.50 signed by Nugent, and on which Anderson made his mark, and that \$137.50 was paid Anderson in Kinkaid's office by Kinkaid; and it was my money.

Q. And is that the same deed that he made his final proof?

A. I think it was after he made his final proof, shortly afterwards.

Adjourned to Monday morning April 5th, at 10 A. M.

April 5th, 1909.

At 10 o'clock A. M., met pursuant to adjournment. Counsel for parties being present, whereupon Mr. John I. Wells proceeded to testify as follows:

(By Mr. BUNDY.)

Q. Have you refreshed your recollection as to whether you got \$1600 from Mr. Stunenberg in 1903? A. No, sir, I have not.

Q. Mr. Wells, I show you check dated, Caldwell, Idaho, April 28th, 1903, drawn on the Commercial Bank, payable to the order of John I. Wells, for \$1600 and signed "Frank Stunenberg, Agent," stamped on it marked "Paid" by the Caldwell Bank, April 30th, 1903, and I ask you whether or not you

(Deposition of John I. Wells.)

received that check; is that your endorsement on the back of it, and did you get the money for it?

A. That is my endorsement, and I might have received that check at that time, but not in 1904.

Q. I said 1903.

A. You said 1904 the other day.

Q. There isn't a question but you received the check? A. No.

Q. But you have no recollection what it was for?

A. No, sir, I have not.

Mr. GORDON.—That is all.

Redirect Examination.

(By Mr. BUNDY.)

Q. Mr. Wells, the stub-book of Mr. Stunenberg which has been introduced in evidence shows the check of April 28th, for \$1600, and a notation on it, "John I. Wells, for two titles on Crooked River," apparently being the check just shown you; I will ask you as to whether or not you ever bought any titles on Crooked River?

A. No, sir, I never did.

Q. Did you ever buy for yourself individually, or for Mr. Stunenberg, any claims on Crooked River?

A. I never purchased any claims whatever on the Crooked River.

Q. Did you ever buy any claims on Crooked River for Mr. Kinkaid?

A. No, sir, I never did.

Q. Have you any recollection at all with reference to this check? A. None whatever.

Q. Mr. Wells, you stated in answer to a question

(Deposition of John I. Wells.)

by Mr. Gordon as to what if any interest you had in attending the taking the evidence at Boise for the witnesses in this case who testified at that place. I wish you would state a little more fully the arrangement you made with me and when it was made, etc., with reference to attending this testimony.

A. All I knew about it, why I met you when you arrived there, and you said you would like to have me present there during the examination of those witnesses, and that you would pay me for it, so I told you I would.

Q. You have assisted me all the way through in this case. A. Yes, I have.

Q. And I have paid you, or agreed to pay you for your time? A. Yes, sir.

Q. You remember my saying to you that my clients, the Barber Lumber Company, had no knowledge of these transactions and didn't know the persons, and that I would like to have you present and advise me as to who the parties were, etc.?

A. Yes, sir.

Q. You said that Mr. Kinkaid at the time you first consulted him with reference to the Anderson and Nugent loans advised you not to loan them money; and I ask you as to whether or not he advised you that loaning the money would be illegal, or for some other reason?

A. He said I had a perfect right to loan them money, but he advised me not to do so for the reason that they would all be running after me to borrow money, if I loaned to anybody, which proved

(Deposition of John I. Wells.)

true, but I went ahead and loaned the money anyway.

Q. You testified at the time you began your testimony as to the value of these lands, that they were worth 50 cents per thousand based on what the State had sold? A. Yes, sir.

Q. The sales made by the State were to local dealers and in comparative small amounts, were they not?

A. They went to the highest bidder.

Q. But the sales were in comparatively small amounts? A. Yes, sir.

Q. Now, when it came time for these entrymen to sell their claims, I ask you as to whether or not, the price of what scrip could be procured fixed the price of these claims? A. Yes, sir.

Q. And scrip could be procured at \$5.00 per acre?

A. At \$3.50 in 1901.

Q. And from that up to about \$5.00?

A. Yes, sir; the wood in the basin country had been cut by local people and that was the rate they settled with the Government, always 50 cents per thousand; they had 300 cords that the Government had put a notice on for them to come and settle without moving the wood; I don't just know what they settled for, but it was not over 50 cents.

Q. During 1901 and 1902, did you have any business relations with Mr. Kinkaid other than timber transactions were you interested with him in any mining ventures?

A. No, sir, I think not.

(Deposition of John I. Wells.)

Q. Here is a check, I will call your attention to, of June 14th, 1904, it seems to have been drawn to John Kinkaid for part payment of John I. Wells' title; that seems to be a personal check of his. Did that have anything to do with your title that you entered?

A. I don't think so; I know that I never got a dollar for my title until I sold to the Barber Lumber Company.

Q. In 1906? A. Yes, sir.

Q. That check seems to have been made to Mr. Kinkaid and not to you; do you know anything about it?

A. I don't recall anything about it.

Q. Under date of June 25th, there is a check to L. M. Pritchard for balance of John I. Wells' title, which also seems to be a personal check of Mr. Stunenberg; do you know anything about that?

A. I don't remember now, but I judge it was for the collection of the Sweet moneys.

Q. Have you any distinct recollection on the subject? A. No, sir.

Q. Under date of July 31st, 1904, there is a check to John I. Wells, for commission account Kinkaid, Crooked River, and a similar check under date of August 31st, which reads the same "to John I. Wells for commission account of Kinkaid, Crooked River." Each of these checks are for \$150.00, apparently checks made payable to you; have you any recollection of those checks?

A. I have a recollection of a check for something

(Deposition of John I. Wells.)

over \$100 to reimburse me for expenses on a trip into the Deadwood basin about that time, and that was a check from Frank Stunenberg; he was interested in a mining deal with me.

Q. Did that have anything to do with this timber in question? A. No, sir.

Q. Did you have anything to do, with any commission growing out of the purchase or sale of Crooked River lands? A. No, sir.

Q. Did you have any interest in Mr. Kinkaid's commission? A. No, sir, I did not.

Q. Do you know anything about Mr. Kinkaid's commission in the Crooked River? A. No, sir.

Q. You were asked some questions as to what you had been doing since 1903; I will ask you if you have been doing much in the real estate business since that time?

A. I was pretty lively until I was indicted in this timber business, and since then I haven't been so lively, because it hurt my credit and I could not do so much.

Q. I will ask you that during the time this evidence in this case was taken in Boise, if that indictment was still pending against you, or was it not?

A. Yes, sir.

Q. And has been settled since then?

A. Yes, sir.

Q. You have done business enough since 1903, to make your living? A. Yes, sir.

Mr. BUNDY.—That is all.

(Deposition of John I. Wells.)

Recross-examination.

(By Mr. GORDON.)

Q. There is still an indictment standing against you in this timber transaction?

A. I understand there was one that was not dismissed, but I believe the bonds were dismissed.

Q. The bonds were dismissed because as you had given bond in one case growing out of the same transaction, they didn't require a bond in the other case.

A. They never did require a bond in that one indictment.

Q. Do you remember how many persons you located in the basin, in the Crooked River country, who made their final proof on those claims conveyed to the Barber Lumber Company, or conveyed to persons, and the title eventually got into the Barber Lumber Company?

A. I don't know just how many of them sold to people that turned it over to the Barber Lumber Company, but I understand that the Barber Lumber Company has bought practically all of the land that was located in that country.

Q. Can you recall any claim that you located in the Crooked River or the basin, that did not eventually get into the Barber Lumber Company's hands?

A. I do not.

Mr. GORDON.—That is all.

Redirect Examination.

(By Mr. BUNDY.)

Q. Is there any other company in that vicinity

(Deposition of John I. Wells.)

who has operated mills, or would buy claims?

A. None except local mill people there; there was a small mill there in Boise for several years.

Q. A small concern?

A. Yes, they bought land nearer to Boise.

Q. The timber in the Boise Basin that you located was remote from Boise? A. Yes, it was.

Q. Was it advisable for any person to buy that except on a large scale and go to the expense of bringing it to Boise?

A. I always figured that they would have to fix some way of getting it out of there, besides driving it.

Q. You have no means of knowing what lands the Barber Lumber Company owned except what you have heard in this case?

A. Yes, and from newspaper reports.

Q. And you know that the Barber Lumber Company own a good many thousand acres of land in this locality that you didn't locate?

A. I have heard it.

Recross-examination.

(By Mr. GORDON.)

Q. Did you know of any other persons that were trying to buy up those claims other than the Barber Lumber Company?

A. Yes, sir, I knew of fellows trying to buy them.

Q. Representing big companies?

A. Well, I heard that the Fayette Lumber Company was trying to buy in there,

Q. At the same time that the persons named in

(Deposition of John I. Wells.)

this bill were acquiring?

A. It was along about that time they were acquiring timber in the Fayette Company, with head offices at Boise, and I understood they bought most of that country.

Q. I am speaking of this timber in the Crooked River Country?

A. There is only a divide between the two; a water shed.

Q. Did you know a man by the name of DeArce?

A. Yes, sir.

Q. Was he trying to buy for some company?

A. I have heard since this case began that he was.

Q. I am asking what you knew at that time?

A. I didn't know at that time.

Mr. GORDON.—That is all.

[Deposition of Louis M. Pritchard, on Behalf of the Defendants.]

LOUIS M. PRITCHARD, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. BUNDY.)

Q. Mr. Pritchard where do you live?

A. Los Angeles.

Q. How long have you lived here?

A. About two years, a little over.

Q. You are one of the defendants in this action, are you not?

(Deposition of Louis M. Pritchard.)

A. I believe I am named as one of the defendants; I haven't had an opportunity to read the complaint.

Q. Where did you reside before living in Los Angeles? A. In Boise, Idaho.

Q. How long did you live there?

A. I lived there four or five years.

Q. And what was your business or profession while in Boise? A. Practicing law.

Q. And where were your offices?

A. Located in different places; most of the time I was in Peter Sonna's building.

Q. Did you live in Boise in 1901, 1902, and 1903?

A. I think I must have come there in 1900 or 1901; I am not sure about that.

Q. And lived there until about two years ago?

A. Yes, sir.

Q. Do you know the defendants James T. Barber, or Sumner G. Moore, or either of them?

A. No, sir.

Q. Did you ever talk with them or ever have any business transactions with them? A. No, sir.

Q. Did you ever have any correspondence with them?

A. I never did.

Q. Do you know L. G. Chapman?

A. Yes, slightly.

Q. Did you ever have any business relations with him?

A. No business relations that I recall now, except in connection with one claim, the Swan claim.

(Deposition of Louis M. Pritchard.)

Q. That was later?

A. Yes, that was later.

Q. Can you tell about what year that was?

A. I am very poor on dates, but it only a short time before Governor Stunenberg was killed.

Q. Sometime in the year 1905?

A. Yes, sometime before that.

Q. Do you know John I. Wells and John Kin-
kaid? A. Yes, sir.

Q. Did you know Governor Stunenberg in his
life? A. Yes, sir.

Q. Did you know A. E. Palmer?

A. No, not personally.

Q. Did you ever have any business relations with
him?

A. Not that I know of, except that I made some
deeds, I believe, in which he was grantee.

Q. Did you make those at his personal sollicita-
tion? A. I did not.

Q. Did you ever have any conversation or cor-
respondence with Mr. Palmer relative to timber
lands in the State of Idaho?

A. I never had any correspondence with him of
any kind.

Q. Or did you have any conversations with him
relative to timber lands?

A. No, I never met him.

Q. Did you ever have any correspondence or con-
versation with either John L. Long, or Horace S.
Rand, with reference to timber lands in Idaho?

A. No.

(Deposition of Louis M. Pritchard.)

Q. Do you know either of these gentlemen?

A. I saw Mr. Long at Boise in the trial of Mr. Borah's case.

Q. That was in the fall of 1907?

A. Yes, sir; that is the only time I saw him.

Q. Did you know William Sweet?

A. Why, I had an introduction to him, I guess probably in 1902, that is all, and then I met him up at Boise after these indictments were returned, and got well acquainted with him at that time.

Q. Did you ever have any correspondence or conversation with Mr. Sweet during the years 1901-02, 03 or 04, relative to acquiring timber lands in the State of Idaho?

A. No, I believe not.

Q. Do you know Mr. Wells and Mr. Kinkaid?

A. I do.

Q. Were you employed by any persons during the years 1901, 03, 03 or 04, as attorney, or otherwise, in the matter of buying timber lands in the State of Idaho?

A. I was employed by Mr. Kinkaid; I acted as notary public and in the matter of purchasing claims.

Q. During that time or any time, were you employed by Governor Stunenberg for the purchase of claims?

A. I was not.

Q. Or John I. Wells? A. I was not.

Q. Or Patrick Downs? A. No.

Q. William Sweet? A. No.

Q. Mr. Barber or Mr. Moon?

A. No, sir.

(Deposition of Louis M. Pritchard.)

Q. Or Mr. Palmer, Mr. Rand or Mr. Long?

A. No.

Q. Were you at any time employed by any persons in the matter of purchasing timber lands in the State of Idaho other than Mr. John Kinkaid, the defendant?

A. I believe no one, except in one entry in 1904 or 1905, that I bought at the suggestion of Governor Stunenberg and sold to the Barber Lumber Company.

Q. What entry was that?

A. That was the Swan claim.

Q. Did you buy that for yourself or Governor Stunenberg?

A. I bought it for the Barber Lumber Company; there was a mortgage on the property and that was the occasion as I understood it, of the governor wanting to purchase the title for the Barber Lumber Company, purchase the title and thereby straighten out the mortgage and interest.

Q. And were you paid for your services in that connection by the Barber Lumber Company?

A. No; I made a little commission off the transaction for the reason that I bought the claim a few dollars cheaper than the amount that the Barber Lumber Company agreed to pay me.

Q. That is, they offered a certain price for the claim and you bought it at a less price?

A. Yes. I first went to Mr. Chapman, I believe, and got an estimate of what he would pay for those two claims, and then I went and entered into negotia-

(Deposition of Louis M. Pritchard.)

tions with Mr. Swan and closed the transaction.

Q. When were you first employed, if you can remember, by Mr. Kinkaid in this timber business?

A. I am not sure about the date, but I am inclined to think it was in 1902.

Q. On or about June, 1902?

A. I think so.

Q. Was it then or about the time you began making deeds?

A. I believe it was about the time they commenced taking deeds, but it was long after they commenced making locations.

Q. Well, now, what was your employment with Mr. Kinkaid as to what you were employed by him to do?

A. Simply to buy and obtain the titles, and deeds to timber claims up there in the basin, and do such notary work as he had. Mr. Kinkaid was very good to me and brought me all the jobs he could, such as making deeds and papers and other little transactions, and furnished me some money to buy those claims with.

Q. Now, who paid you for your services for doing that?

A. Mr. Kinkaid, except in a few instances entry-men paid for the making of their own deeds.

Q. And of what did your services consist in making out the deeds and acting as notary?

A. Simply of purchasing timber claims.

Q. And who furnished you the money with which to purchase those claims?

(Deposition of Louis M. Pritchard.)

A. Mr. Kinkaid.

Q. And who told you to whom to make the deeds?

A. Mr. Kinkaid.

Q. And what did you do with these deeds when you had acquired them?

A. Turned them over to Mr. Kinkaid.

Q. State as to whether or not in purchasing some of these timber claims in the State of Idaho, you paid a portion of the purchase money out to the entrymen or entrywomen, and to John I. Wells, and other people?

A. Generally I paid the entrymen, but it was quite common for Mr. Wells and other people to make settlements with the entrymen at the time, and I would split the money and pay it over, according to their agreement in reference to the matter.

Q. State as to whether or not, Mr. Wells, in some instances, made you a statement of amounts due to him which he desired to collect?

A. I don't remember of his making statements, but I know that there were occasionally amounts that I kept out for Mr. Wells.

Q. State as to whether or not there were occasionally amounts kept out for other people?

A. Yes, there were, but I have no distinct recollection of any of the transactions for I was not interested. There was a great many of them, and it was calculated to impress itself upon my mind.

Q. Did you attempt, or were you employed at any time by Mr. Wells to assist in making collections of money due to him, for instance, from Mrs.

(Deposition of Louis M. Pritchard.)

Burns? A. Yes, I believe I was.

Q. Did you make a demand upon Mrs. Burns for money due at Mr. Wells' request?

A. I think I did call on Mrs. Burns at one time, but the only distinct recollection I now have was in reference to a \$50 due bill that he had. There might have been other amounts, but I remember that one distinctly.

Q. In your capacity as attorney, and in attempting to collect this from Mrs. Burns, were you acting for any person other than Mr. Wells, himself?

A. No persons but Mr. Wells.

Q. Did you have any interest in the location fees of Wells and Downs, or either of them?

A. No.

Q. Did you have any interest whatever in the purchase of these claims other than you were paid by Mr. Kinkaid for your services?

A. Not a dollar.

Q. Did you know when these lands were located, or what lands were located?

A. I didn't know when they were located nor what lands were located, nor who located them, except as the facts came to my attention in making out conveyances after final proof had been made.

Q. Did you in any instance, Mr. Pritchard, buy or take a deed from any entryman or entrywomen before the final receipt and final certificate of the Boise land office had been issued?

A. Not to my knowledge.

Q. State as to what instructions you had in that

(Deposition of Louis M. Pritchard.)

regard from Mr. Kinkaid?

A. My instructions were only to buy after final receipt was issued.

Q. And did you attempt to comply with those instructions?

A. I endeavored to comply with those instructions, and believe I did so.

Q. Final receipts were issued in these claims in dispute along in June and July, and later in 1902, and from that date can you tell when you were first employed in the purchase of those timber claims?

A. It must have been along in June or July, but I am not sure about that date, or even the year.

Q. Were you a party to any agreement or understanding between Frank Steunenberg, John Kinkaid, John I. Wells, William Sweet, Sumner G. Moon, James F. Barber, Patrick Downs, Horace S. Rand, George S. Long, or any of them, or between those gentlemen and either of them, or any of them, and any entryman or entrywoman whereby such lands were to be entered by the entrymen and entrywomen for the benefit of the defendants in this action?

A. I was not.

Q. Did you ever hear or know of any such agreement?

A. I have no knowledge of any such agreement by any person or persons.

Q. I ask you if you ever heard of any such agreement prior to the time you were served with an indictment of the District Court of Boise County, State of Idaho?

A. I did not.

(Deposition of Louis M. Pritchard.)

Q. As far as you know was there any such agreement in existence between any of the other parties other than yourself?

A. No, sir, nothing came to my knowledge that led me to believe there was any such agreement; in fact, from things that came to my knowledge I was thoroughly convinced otherwise.

Q. Did you have any connection in the location, proving up or subsequent sale of timber and stone claims in the State of Idaho other than as you were employed by Mr. Kinkaid as an attorney and notary public, as you have stated, and the Swan claim that you have mentioned.

A. I don't believe so except perhaps in one or two instances, and I only recall one now,—the entry made by Mrs. Elma Gordon about which I had some conversation with her, and advised her that I thought it would be a good thing for her to take up a timber claim, and I went with her to see the land in company with Mr. and Mrs. Blanford, who was the weather bureau man in Boise.

Q. An employee of the United States?

A. Yes, an employee of the United States.

Q. Were you on friendly terms at the time with Mrs. Gordon?

A. Yes, sir, I was.

Q. Were you also an intimate friend of the Blandfords?

A. Yes, sir, I was.

Q. Now, in suggesting to Mrs. Gordon the advisability of taking up a claim, were you acting for Mr. Kinkaid, or for any person other than as a friendly adviser of Mrs. Gordon?

A. I was not.

(Deposition of Louis M. Pritchard.)

Q. Did you have any discussion with her, and know what she was going to do with it when she got it?

A. I don't recall any discussion.

Q. Did you make a similar claim yourself?

A. Yes, in company with the parties I named, Patrick Downs, however, was the cruiser, and took us out and showed us the land.

Q. I will ask you as to whether or not you paid Mr. Downs the usual locating fee for his services?

A. I don't recall that, but I am satisfied that it was paid, perhaps I settled the business for Mrs. Gordon as well. I remember distinctly about the team that we employed; Mr. Blandford and I settled that up and I afterwards had a settlement with Mrs. Gordon.

Q. Now, with reference to location fee for your own claim, do you remember about that?

A. I remember that I was charged a location fee, but I don't remember who I paid it to.

Q. You made your filing March 21st, 1902, and I ask you as to whether or not it was after that that you were employed by Mr. Kinkaid?

A. It was after that.

Q. At the time you made your location and Mrs. Gordon made hers, had you been employed in any capacity by any of the persons named, as attorney, or otherwise, for the purchase of timber lands in the State of Idaho?

A. At the time I made my location,—if I made my location in March, 1902, I was not then employed in any capacity by any person. At the time Mrs.

(Deposition of Louis M. Pritchard.)

Gordon made her entry, which was later, to my recollection, I was then employed as I have stated.

Q. Except as you have stated, Mr. Pritchard, did you have any connection whatever with the purchase of timber lands in the State of Idaho, by Frank Steunenberg, or the Barber Lumber Company, John Kinkaid, or any of the other defendants named?

A. I have no recollection of anyone, except, occasionally by entrymen making out their entry papers.

Q. Your office was right near, and in the same building as the United States Land Office, at that time, was it not? A. Yes, sir.

Q. Were you paid by Mr. Kinkaid by the month or by the jobs done, or work done?

A. Ordinarily by the piece, for making deeds, and things of that kind, and about— Oh, every few days, we would have a settlement for work that I had done, papers that I had drawn, and that would be the end of it.

Q. Do you recall at about what time your service in that manner terminated?

A. No, I can't tell; it was sometime in 1903, I believe; I think I had very little to do with the last entries that were made. There was no specific arrangement terminating my employment, for the employment was such that it needed no termination.

Q. Did you have any interest, financially or otherwise in inducing people to enter upon timber and stone lands? A. None whatever.

Q. Or did you have any such interest in inducing

(Deposition of Louis M. Pritchard.)

them to sell to the Barber Lumber Company?

A. None whatever, except that I desired to purchase a title whenever I could do so.

Q. Who arranged with the various entrymen as to the price you should pay them?

A. I think in most cases I arranged myself, and agreed with the entrymen upon the price of their land. If there were any amounts to be deducted out, or divided up with any other person, that was a matter that they and those persons interested, figured up and I settled according to their arrangement, otherwise I paid the entrymen the full price of their land.

Q. Were you in each instance, furnished sufficient funds by Mr. Kinkaid to pay the total purchase price agreed upon with the entrymen?

A. I think so. I often had money enough to buy two or three entries, in advance.

Q. Mr. Pritchard, were you requested at any time by any entrymen to procure funds for them by way of advancement on their claims, and if so, by whom?

A. The only instance that I recall now was the entry of Mr. and Mrs. Blandford, and at the time their proof came to be made; they didn't have funds sufficient to make their proof and he asked me if I could raise it for him, and I told him I didn't know whether I could or not, but I doubted it. I went to see Mr. Kinkaid, who was a very intimate friend of mine and tried to borrow the money from him; he told me that he would like to accommodate me, but he could not do so. I informed Mr. Blandford, and he obtained the money from Peter Sonna, the owner

(Deposition of Louis M. Pritchard.)

of the building in which the Weather Bureau was located, and in which both of us were located.

Q. Mr. Pritchard, a number of deeds that have been introduced in evidence were acknowledged before you, in some of which the date seems to be in different writing in the body of the deed, and in some instances the date seems to have been erased and another date put in; can you explain that?

A. I cannot; unless it would be possible to do when I was shown a particular deed.

Q. You don't recall any at this time?

A. I don't recall anything from the regular routine of making those deeds.

Q. I will ask you this question: Did you at this time take deeds and did they or did the acknowledgment of any deed bear other than the exact date at which you took the deed, or took the acknowledgment?

A. I don't think so; there was a few instances that I recall in which I would purchase a claim of an entryman and his or her wife or husband would not be present at the time and I would afterwards get the acknowledgment of the other party and date the acknowledgment of both of them at the date of the latter, for I usually re-acknowledged it by both parties on that date.

Q. Do you recall if the purpose of that was to save work, a separate acknowledgment?

A. Yes, sir, a separate certificate.

Q. Do you recall any instance where deeds were made out and left with you for the purchase of

(Deposition of Louis M. Pritchard.)

claims, and the dates left blank.

A. I don't recall any such, but there might have been.

Q. Do you recall any instance in the latter part of your employment Mr. Kinkaid would prepare the deeds and in leaving town would leave them with you for any purpose?

A. I remember the later deeds were mostly prepared by Mr. Kinkaid, but as to the blank dates, etc., my memory is very deficient.

Mr. Pritchard, the bill of complaint in this action charges that you and the other defendants named, entered into an agreement and conspiracy, having for its object the inducing and persuading of entrymen and entrywomen therein named to make filings upon timber and stone claims at the request of and for the benefit of the defendants; were you ever a party to any such agreement or similar agreement?

A. I never was.

Q. And it is further alleged that pursuant to that agreement you and the other defendants did induce the entrymen and entrywomen named herein to make their filings and afterwards induced them to make final proof, all for the purpose of ultimately turning the land over to the defendants, or to such person, firm or corporation, as the defendants should direct; is that allegation true or false so far as you are concerned?

A. It is, so far as I am concerned.

Q. And it is further alleged in this complaint that for the purpose of consummating that agreement,

(Deposition of Louis M. Pritchard.)

you and the other defendants induced and persuaded the entrymen and entrywomen named to go before the land office, and testify falsely both at the time of making their original filing, and at the time of making final proof; is that true or false, so far as you are concerned? A. False.

Q. Did you at any time, directly or indirectly, suggest to any entryman or entrywoman what they should testify to at the land office?

A. No, sir.

Q. Did you ever at any time directly, or indirectly, request or suggest any such entrymen to file upon any lands, except Mrs. Gordon, as you have testified?

A. I have no recollection of doing so.

Q. Did you have any connection whatever with the filing, proving up, or subsequent sale of the timber and stone entries made in the State of Idaho, mentioned in this complaint, other than as you were employed by Mr. Kinkaid, as you have testified?

A. I have no recollection of anything of the kind.

Q. Do you know Mr. W. C. Lane?

A. The liveryman?

Q. Yes. A. Yes.

Q. I will ask you as to whether or not you ever paid Mr. Lane for team hire, or livery bill, which was due to Mr. Lane for John I. Wells?

A. I have no recollection of such a thing.

Q. Where did you and Mr. Blandford get your team when you went up into that country?

A. I am not sure but we may have gotten the

(Deposition of Louis M. Pritchard.)

team from Mr. Lane, and I believe we did.

Q. Have you any recollection of ever paying Mr. Lane any money on account of a livery bill for Mr. Wells?

A. No, sir, I have no such recollection.

Q. Do you remember where you got the team when you went up to make your own filing?

A. Yes; at that time I was going up on the stage, and while I went to get something to eat, the stage went off and left me and I had a fight with the stage boss and went and hired a rig, and went to Mr. Lane's.

Q. And afterwards paid him that bill?

A. Yes.

Q. Do you know Frank R. McDonald?

A. I may have seen him, but I don't remember him now.

Q. Mr. McDonald testified that he borrowed about \$250 or \$300 for the purpose of proving up, from you; is that statement true or not?

A. It is not true so far as borrowing any money from me is concerned. I have no recollection of anything of the kind, and if he got the money from me, it was left there by some person, that I have no recollection of, for him.

Q. You personally gave him no money?

A. No, sir, and was not authorized to do so with any money of Mr. Kinkaid's, and I had no money of my own to loan, and I don't know Mr. McDonald.

Q. He further testified that he gave you a note for the amount; did you ever take a note from him

(Deposition of Louis M. Pritchard.)

for that amount?

A. I have no recollection.

Q. Do you recall buying his claim afterwards?

A. No, but I might have done so.

Q. Do you recall buying a claim from a man by the name of Allen, in which Mr. Humphreys was interested?

A. No, I have no recollection of such a transaction.

Q. Do you recall any case where Mr. Humphreys told you to collect certain moneys due him from any entrymen or entrywomen?

A. I remember of having some conversation, and a slight acquaintance with Mr. Humphreys, but as to any of the facts in relation to that matter, I don't remember; it was quite common for entrymen and their friends to come in and talk their business affairs over to me, but it took up so much of my time that I almost always tried to make them as short as possible.

Q. I want to ask you about the evidence of one Mr. Stevenson and the fact that he sold his claim to you, and at the time he signed the deed he testified it was folded over so he could not see what was in the deed; I ask you as to whether or not in his case, or in any other case, was there any reason why, or any attempt ever made to prevent entrymen or entrywomen seeing the deed they were signing?

A. No, sir, there was no reason for it; it was never done intentionally, and every person of whom I purchased felt they were given a good and sufficient deed; there was nothing to conceal.

(Deposition of Louis M. Pritchard.)

Q. They all knew they were giving warranty deeds, didn't they? A. Yes, sir.

Mr. BUNDY.—That is all.

Cross-examination.

(By Mr. GORDON.)

Q. Did you explain to each person you purchased a title from that they were making warranty deeds?

A. I have no recollection of explaining to each person that they were making a warranty deed; but I am satisfied that every one knew that they were warranty deeds and they had plenty of opportunities to read them and see different things. There was absolutely no deception in any matter of that kind.

Q. I mean you didn't feel called upon to explain to these people that they were giving a warranty deed as distinguished from a deed without a warranty?

A. If I had had dealings with any person who didn't know I am quite sure that I would have told them, but it was understood and I always supposed they all understood that it was a warranty deed, and in most instances the deed was either read over by themselves, or by me to them.

Q. How many of the persons from whom you purchased titles, mentioned in this complaint, do you think could distinguish between a warranty and a deed that was not a warranty deed, or knew a deed when they saw it if it was not printed on it that it was not a deed?

A. I can call to mind no person who didn't know the difference between a warranty deed, and a quit-

(Deposition of Louis M. Pritchard.)

claim deed, or there may have been some who didn't understand the technical legal difference between quitclaims and warranty deeds.

Q. (By Mr. BUNDY.) Mr. Pritchard, there has been some evidence here of entrymen who sold their claims to you, to the effect that the deed was all prepared when they first went to you to sell, and I ask you as to whether or not that is true, in any instance?

A. It is not true in any instance that I have any knowledge of.

Q. (By Mr. GORDON.—Continuing Cross-examination.) I show you a deed dated March 14th, 1903, made by Frank Lane to A. E. Palmer, and marked "Complainant's Exhibit Frank Lane No. 1," and ask you whether or not that deed is in your handwriting?

A. The body of the deed is not in my handwriting.

Q. In whose handwriting is the body of the deed?

A. I judge that it is in the handwriting of Mr. Kinkaid.

Q. Mr. John Kinkaid? A. Yes, sir.

Q. There isn't any question in your mind about that being Mr. Kinkaid's writing?

A. No, there is no question.

Mr. BUNDY.—It is stipulated that Mr. Kinkaid recognizes his own handwriting.

Q. (By Mr. GORDON.) Mr. Pritchard, can you by looking over this bill of complaint, or the bill of complaint in this action, recall the name of the persons from whom you bought the claims?

(Deposition of Louis M. Pritchard.)

A. I cannot; many of them were strangers to me, and I could not name them; there might be some that when my attention was called to them, I could mention as having sold to me.

Q. Would you mind looking over this list of names and see if they refresh your memory as to those you did purchase the claims from?

A. I will look at it; my recollection is very poor as to persons I bought titles of (examining bill); I am quite sure I bought Lelia Stevenson's; I believe I bought Gustave A. Link's and Mary Link's; Louis K. Burns, I am quite sure I bought his. Louis L. Paulsen, and Joseph M. Hollister; I believe I bought Albert B. Ewing's and Cora B. Ewing's, John E. Hobbs, Elmer E. Gardner, Samuel M. Blandford, Emma Lou Blandford. I know there are many more whose titles I purchased, but I cannot positively recall the transactions at this time; something may recall them to my mind in the course of the testimony. It has been a good many years and most of the entrymen were strangers to me.

Q. How old are you, Mr. Pritchard?

A. Past 52.

Mr. GORDON.—I will ask the stenographer to read to you the names that you have mentioned, and ask if they are all the persons that you can remember of having purchased claims from involved in this bill, as qualified by your answer on that subject. (List of names read by stenographer.)

A. Those are all in the list of whom I am quite positive I bought claims; I know, however, that there

(Deposition of Louis M. Pritchard.)

are many more entrymen whose land I purchased.

Q. Do you mean you know that there are more persons from whom you have purchased titles of property involved in this suit, but you can't remember their names, is that correct?

A. I don't remember the names, and the distinct circumstances of the transaction, but I know there was a large number of persons of whom I purchased titles.

Q. In other words, you have only named 11 persons, I think, and you know that you bought more than 11 titles? A. Yes, sir, many more.

Q. And reading the names and description from the bill does not refresh your memory as to other persons from whom you bought titles, does it?

A. Many of the persons whose names are called to my attention in the bill are persons whom I know, and am inclined to believe I purchased their titles, but I have no distinct recollection of the transactions at this time.

Q. Are the persons you have named, the only persons you can remember with whom you had any transactions, or negotiations concerning the title to the property of the respective persons named in the bill?

A. The parties I named are those, and only those which I am quite positive of having bought their titles. I know, however, that I have met a large number of the parties named in the complaint, and as I have had very little business with them unless it was in connection with the purchase of their claims, I am quite sure that I purchased the claims

(Deposition of Louis M. Pritchard.)

of a large number of other persons mentioned in the complaint.

Q. Did you prepare the deeds conveying the property of these 11 persons?

A. Let me look over those again.

Q. I will read them to you. (Reads names to witness.)

A. Yes, I am quite sure that I made out the deeds for those conveyances.

Q. Do you remember whether you made out the deeds or entry papers for any of the other entrymen mentioned in the bill?

A. I know that I did, but I can't recall the particular transactions at this time.

Q. And reading the names of those persons in the bill, doesn't refresh your recollection to the extent that you can swear as to what you did with those other persons in connection with their acquiring title?

A. No, sir.

Q. You stated that the property that you bought and all the money that you used in the transactions, except as you have qualified in your testimony, was received from John Kinkaid, is that correct?

A. Yes, I believe so. There may have been individual transactions from other persons that I have no recollection of.

Q. I mean with reference to the property and the entrymen mentioned in the bill of complaint; did your last answer contemplate that?

A. Yes.

Q. And did Mr. Kinkaid give you the purchase price of this property, did he give it to you by cash or by check?

(Deposition of Louis M. Pritchard.)

A. Usually in cash, and it was seldom given me in exact amounts for a purchase, but in such a way that I would have a surplus.

Q. In other words, he would give you a lump sum, is that it? A. Yes, sir.

Q. Would Mr. Kinkaid tell you the name of the entryman and give you a description of the property he desired you to purchase?

A. Not as a general rule.

Q. What were his instructions to you as to what property you should purchase?

A. My instructions were to purchase any of these timber claims up in that locality that I could buy.

Q. That was upon any timber claim that had been entered at that time?

A. Yes, there was nothing said about that as I remember of. It was of course, some of those who had procured their title, or right after procuring their title.

Q. Did you have any arrangement or arrangements with any bank in Boise, by which you could obtain money from said bank for the purchase of these timber claims by drawing your own check upon it? A. No, sir.

Q. Did you have any arrangements with any bank by which you could go to that bank and get money without drawing check?

A. No, sir, but there may have been one or two instances in which I had deposited some money in the bank and checked it out, but usually I got my money in currency, and deposited it in the vault of

(Deposition of Louis M. Pritchard.)

Peter Sonna, the owner of the building in which I was located.

Q. You do not understand my question. Did you have any arrangement with any bank at Boise, or any other place, by which you could go and get money without a check, for the purpose of buying these timber claims?

A. No, sir, and as a rule not with a check; that is my condition to-day.

Q. Did you have any arrangement by which you could enclose a deed drawn to Mr. Palmer, or anyone else, with a note to any bank in Boise, and that upon the presentation of that note, or letter, with the deed to that bank, the bearer of it would be paid a certain sum of money?

A. I had no such arrangement of any kind with any bank or person, other than Mr. Kinkaid.

Q. I understood you to say that you did not know A. E. Palmer? Is that correct?

A. That is correct.

Q. And who told you to put A. E. Palmer's name in the deeds that you drew as grantee?

A. I have no distinct recollection; I am quite sure, however, that it was done under the instruction of Mr. Kinkaid.

Q. Did Mr. Kinkaid pay you a salary for your services?

A. No; there was no arrangement of salary.

Q. Did he pay you so much for each title that you acquired? A. No.

Q. What were your arrangements with Mr. Kinkaid in that respect?

(Deposition of Louis M. Pritchard.)

A. By taking these titles I would get the conveyances acknowledged in a great many cases, and sometimes some other little job afterwards from the grantee, and those things were charged up to Mr. Kinkaid, I mean such conveyances and things as I did for him, were charged up to him at my regular office fees for such work.

Q. And what were your office fees for drawing a deed, \$2.00? A. \$2.00, I think.

Q. And for taking an acknowledgment 50 cents?

A. I believe so; and Mr. Kinkaid, when he would settle up every few days, if I had much outside work we would agree on an amount to be paid me and balance everything up for the outside trouble that I had been to.

Q. Can you tell how much that would amount to per claim?

A. No, sir, I cannot, because it was not contingent upon the claim, or the number of claims, but upon actual services rendered. In some instances I would be required to go from my office to other places round about town to attend to matters in connection with the deeds, and it would be greater in some instances than in others.

Adjourned to 1:30 P. M.

April 5th, 1909.

Pursuant to adjournment the taking of testimony was continued at 1:30 P. M.

Q. (By Mr. GORDON.) Mr. Pritchard, you took up a claim under the Timber and Stone Act in March, 1902?

A. I believe that is the year.

(Deposition of Louis M. Pritchard.)

Q. I will show you a timber and stone sworn statement of L. M. Pritchard, dated March 21st, 1902, and will ask if you filed and signed that paper in the land office on or about that date?

A. Yes, sir, that is my signature without a doubt.

Q. And that paper is in your handwriting, is it?

A. Yes, sir.

Q. I will show you the testimony given on final proof of Louis M. Pritchard, June 11th, 1902, and ask you if you signed that paper; is that your signature?

A. Yes, that is my signature.

Q. I show you a non-mineral affidavit dated March 21st, 1902, signed Louis M. Pritchard, and also notice of publication of the same date, and ask you if you signed the non-mineral affidavit and filed it in the land office at Boise on or about the date it bears, and whether the two papers are in your own handwriting?

A. The non-mineral affidavit and notice of publication are both in my handwriting and my signature is attached to the non-mineral affidavit,.

Q. I show you deed dated March 19th, 1903, made by Louis M. Pritchard to A. E. Palmer, consideration \$1000, acknowledged before Benj. H. McGrew, Notary Public, and I will ask you if you signed and acknowledged that paper, and is that your signature attached to it?

A. Yes, sir.

Q. In whose handwriting is the deed?

A. Mr. Kinkaid's.

Q. Mr. John Kinkaid's? A. Yes, sir.

Q. How much did you get for your claim, Mr. Pritchard?

A. I don't remember.

(Deposition of Louis M. Pritchard.)

Q. \$650?

A. I guess so, if that is what the deed recites, but I have no recollection.

Q. The deed recites \$1000.

A. I don't remember about that.

Q. And did you have any reason for not preparing that deed yourself?

A. No, I don't suppose so; I suppose there was some reason why I didn't do it, but I don't remember what it was.

Q. At that time were you buying land for Mr. Kinkaid, or were you not? A. Yes, I was.

Q. And was being paid by him for preparing deeds? A. Just what year is that?

Q. That is in 1903.

A. I don't know whether—I think that was after Mr. Kinkaid had commenced making most of the deeds himself.

Q. When you made your final proof, do you remember whether you paid the \$400 in to the land office by check or in cash?

A. I don't remember whether it was by cash or with a check; I presume it was cash, because the land office would not take a check.

Q. Did you borrow any of that money?

A. I don't know whether I did or not, I expect I did, whatever my proof says is the facts.

Q. On cross-examination you swore that you had saved it out of your business transactions at different times. In answer to the question as to whether you had a bank account in the previous six months,

(Deposition of Louis M. Pritchard.)

you said, "I had not until a few days ago; I gathered my money together and deposited it in Boise, Idaho."

A. That is the fact as near as I can remember.

Mr. GORDON.—We offer in evidence the timber and stone sworn statement of Louis M. Pritchard, dated March 21st, 1902, and non-mineral affidavit and notice of publication, testimony of Louis M. Pritchard of final proof, June 11th, 1902, all of which papers have been identified by the witness Louis M. Pritchard, as having been signed by himself and filed in the land office at Boise, Idaho, and the testimony of the other witnesses regarding final proof, Receiver's receipt and Register's certificate dated June 13th, 1902, the cross-examination of Louis M. Pritchard given at the time he made his final proof and attached to it, the deed dated March 19th, 1903, made by Louis M. Pritchard to A. E. Palmer, identified by Louis M. Pritchard, as having been signed and acknowledged by him, certified copy of patent dated January 28th, 1904, all to the Northwest quarter of Section Twenty, in Township Six North, of Range Six East, Boise Meridian, all of said papers marked "Complainant's Exhibit Louis M. Pritchard No. 1."

Redirect Examination.

(By Mr. BUNDY.)

Q. Mr. Pritchard, I neglected to ask you something in reference to some of the second deeds that were taken by certain of the entrymen, and I think it appears in the evidence that you took some of

(Deposition of Louis M. Pritchard.)

those second deeds; do you remember of doing that?

A. Yes, sir.

Q. By whom were you employed to get some second deeds? A. Mr. Kinkaid.

Q. Could you tell the number of persons for whom you took them?

A. There was quite a number of them, nearly all of them were— There was a large number, I don't remember just how many; I had to run all round over town to find them.

Q. You are not able to give us the number of them, nor the names of the parties?

A. I think Gustave Link and his wife; perhaps all those that I mentioned before were part of those, but I would not be sure of that.

Q. Do you recall now Mr. Kinkaid giving you any reason for those second deeds?

A. No, I don't know any reason.

Q. And were you paid for your services?

A. Yes.

Q. By whom? A. Mr. Kinkaid.

Q. Who prepared those deeds?

A. Those deeds were all prepared by Mr. Kinkaid.

Q. And your part was simply to have them acknowledged before you? A. Yes.

Q. With reference to the timber and stone claim you made, about which you have been asked, I will ask you a few questions that I have asked all entrymen and that is as to whether or not at the time you filed upon that land, when you made your original

(Deposition of Louis M. Pritchard.)

application for purchase, did you have any kind of an agreement, express or implied, written or oral, with any firm, or corporation, by which you had obligated yourself to sell, transfer, or assign to any of such persons, firm or corporation, or to any person they should direct, any interest in the title which you might acquire from the United States, or any interest in the timber situate upon the land you might acquire? A. No, sir, I had not.

Q. Did you have any such or similar agreement at the time you made your final proof?

A. No, sir.

Q. Did any person other than yourself have any interest or lien upon the land you acquired, at the time you filed upon it, or at the time you made your final proof? A. No, sir.

Q. And the statements that you made at the Land Office at the time of final proof were correct, were they not? A. I think they were.

Q. It is charged in this action that we are trying that you entered the land in question, specified in your final proof papers, at the instance of, and at the request of the defendants in this action; is that true?

A. I did not enter in the interest of the defendants or any of them, or for any other person.

Q. It is also charged that you made the entry for the benefits of the defendants, or some of them; is that correct? A. It is not.

Q. It is further charged that you agreed with the defendants, or some of them, prior to filing, and at

(Deposition of Louis M. Pritchard.)

the time of filing that you would make such application of purchase, and that you would further, at the solicitation and request of the defendants testify falsely at the Land Office, and procure title, and turn the land over to the defendants, or such persons as they might direct; is that true or false?

A. It is false.

Mr. BUNDY.—That is all.

Recross-examination.

(By Mr. GORDON.)

Q. Do I understand there are between 45 and 55 second deeds to the land involved in this lawsuit; what is your best recollection as to how many of those second deeds you secured?

Mr. BUNDY.—Object to the statement that there were 45 or 55 second deeds.

Mr. GORDON.—I understand there were between 45 and 55.

Mr. BUNDY.—Do you mean that there is anything in this evidence to show that there were between 45 and 55 deeds?

Mr. GORDON.—No.

Mr. BUNDY.—I object to you assuming.

Q. (Mr. GORDON.) Answer the question.

A. I don't remember; there were several of them.

Q. How many?

A. I think there were certainly at least eight or ten.

Q. Is that all you remember of?

A. I don't remember of that many specific persons, but my knowledge of the running around I did

(Deposition of Louis M. Pritchard.)

and the facts of it—my general knowledge of it was that there was at least that many.

Q. Do you remember whether or not you got a second deed from Walter Joplin?

A. I can't tell whether I did or not, because I don't remember what ones they were, except in a very few cases where something particular called my attention to it.

Q. Do you remember Andrew Joplin?

A. No, I don't.

Q. Do you remember whether you got a deed from him at all? A. No.

Q. Do you remember whether you got a deed from Mrs. Sonora Joplin? A. No, sir.

Q. Do you know William Gifford?

A. I have heard the name, but I don't know him personally.

Q. Do you know whether you got a second deed from William Gifford and his wife?

A. I have no recollection of anything like that.

Q. Do you know Samuel Greig, and his wife Sarah Greig? A. Yes, I know them.

Q. Do you remember if you got second deeds from them? A. No.

Q. You would not say that you didn't get them?

A. No.

Q. Do you remember Charles Ballantyne?

A. I don't know him personally.

Q. Do you remember whether you got a second deed from him? A. No.

Q. Do you know Abel Edward Hunter?

(Deposition of Louis M. Pritchard.)

A. Yes.

Q. Do you know if you got a second deed from him, or not? A. No.

Q. But you would not say that you didn't get one? A. No, I don't remember about it.

Q. Did you give them any reasons when you went to get these deeds for asking them to make a second deed?

A. Well, I told them that the parties had requested it, and that I had been requested to do that, that is all the reason I gave them.

Q. Did you have the original deed returned to them? A. Yes, sir.

Q. Did you return it to them in all cases, or did you destroy it in some cases?

A. I would not be sure about that, one way or the other. If I destroyed them, I destroyed them in their presence.

Mr. GORDON.—That is all.

Redirect Examination.

(By Mr. BUNDY.)

Q. During the time you were employed by Mr. Kinkaid in the purchase of these timber lands, I will ask you as to whether or not you were devoting all your time to that, or as to whether or not you were carrying on other legal business at that time?

A. I was doing a general legal business.

Q. And this simply constituted a part of your business? A. Yes, sir.

Mr. BUNDY.—That is all.

[**Deposition of John Kinkaid, on Behalf of the Defendants.**]

JOHN KINKAID, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. BUNDY.)

Q. Mr. Kinkaid, you, I believe, were named as one of the defendants in this action?

A. I believe so, I never saw the complaint; I was never served.

Q. You never were served?

A. No, sir, I have never seen it.

Q. Where do you reside now, Mr. Kinkaid?

A. I reside at Rawhide, Nevada.

Q. And what is your business?

A. Law practice.

Q. Where did you reside before you went to Rawhide?

A. I formerly resided in Colorado, not going back too far. I began to practice law in Colorado in 1880, and from that time on until 1898 I practiced law in Colorado, always in mining districts, and in the mining states, and was always in the mining business.

Q. Then from 1898 where did you go?

A. I went in 1898 to Idaho, early in '98, or the last of '97, I became interested in a mining property in the Boise Basin, Idaho, Boise County. I took over a lease and option on that property, and I was

(Deposition of John Kinkaid.)

paying for the work on the property until in the summer of '98, then I concluded I could manage that property better myself, and I went out there to see about it, and I stayed there several years, and was mining several years in the Boise Basin, in Idaho.

Q. Did you during that time practice law to a considerable extent in Idaho?

A. No, I never practiced law in Idaho; that is I never offered to practice law in Idaho; I recognized the fact that one should not be doing anything else but the law business, and I was also in the mining business, and although I was admitted to the Bar in Idaho I was not practicing law. I did some business for some Colorado men, and some intimate friends, for which I was paid excellent fees for what I did, and then I did some trivial work in connection with these timber claims that might be considered legal work, but I considered it a small thing at the time.

Q. Where did you live, in what city were you carrying on your operations in the Boise Basin in '98?

A. I lived in the Boise Basin from '98 until 1901, I was in Boise Basin constantly; of course, I was in Boise City, but not very often, and I would be there more in the winter than in the summer; I was doing business up in the Boise Basin.

Q. Did you maintain an office at Boise, or a residence, or anything of that kind?

A. No, I did not; I was carrying on a lot of things up there; I invested a lot of money up there, and it was a permanent investment; of course I

(Deposition of John Kinkaid.)

never got out what I put in it, something like \$75,000.

Q. Was that in the Boise Basin?

A. Yes, in mining operations.

Q. Were you elected to some State office in 1906?

A. Yes, in the fall of 1900, I had made a failure then in the mining operations that I had up there pretty generally. I don't want to make this too general, but to explain the situation; it had gotten so that it was very hard for me to meet my mining obligations at that time because my partners had quit; the operations had not succeeded as I thought they might, and they had seized upon the idea that they wanted a Democrat from outside of that whole country up there and I was elected to State Senate. I didn't want the thing.

Q. That was in the fall of 1900?

A. Yes, in the fall of 1900.

Q. And you attended the legislature session which convened the forepart of 1901, and lasted until the usual time?

A. Yes, 60 days.

Q. During the time that you were serving in the legislature, and up until the time it ceased, had you looked into the timber question in the Boise Basin, and vicinity with view to buying it?

A. No, not in any way.

Q. Did you know anything about the Timber and Stone Act and what was available under it, in the Boise Basin, at that time?

A. I had never really paid any attention to it; I was a lawyer and mining man and the timber and

(Deposition of John Kinkaid.)

stone entries didn't interest me; I don't suppose that there was any other mining law that I didn't know about.

Q. (By Mr. GORDON.) Mr. Kinkaid, your term in the legislature ran from sometime in January, 1901, until sometime in March, 1901, is that correct?

A. That is the active term when we drew \$5.00 daily.

Q. (By Mr. BUNDY.) But you served for two years?

A. Yes, but there were only 60 days, it began about the 6th of January and ran for 63 or 74 days.

Q. After your active term in the legislature in the spring of 1901, what did you next do, Mr. Kinkaid?

A. I returned to the Boise Basin as I stated, and I had a quartz-mill in the Boise Basin at that time, and I had a ten-stamp mill there at that time and I think I got a small mill after that time, after the legislature; yes, I know I did it after that time.

Q. Did you ultimately move to Boise and establish an office, or residence there?

A. I was just trying to think. I stayed there in the Basin until—it must have been I think in September, 1901, it may have been August, or somewhere along there, and I ran this little mill that I had, and I also ran the ten-stamp mill, and sold them both to Mr. Bowen. Samuel Clark—a large placer miner at Centerville, and a very intimate friend of mine came to me, and wanted me to take up some of

(Deposition of John Kinkaid.)

his litigations in regard to that business, and I would not do that because I knew that if I began any such work of litigation, I would be tied down again to law practice, and I didn't want to do that, but he did induce me to procure his patents upon about 700 acres of mining claims. I may be mistaken as to the number of acres, but I think it was 6 or 7 claims, and they might have been anywhere from 20 acres up to 160 acres. The Land Office records there will show it, and I procured those patents for him, and when I went to Boise at all I went down there to finish that work for him and also some mining sales that I had on hand myself.

Q. Will you tell about the time you went to Boise?

A. I am uncertain about that, but it was sometime anyway in the summer or fall of 1901, but time is rather hard to remember.

Q. At that time when you went to Boise, had you become interested in any manner, or had you learned anything about the entries that were being made, or the prospective entries under the Timber and Stone Act in the Boise Basin?

A. I knew about the timber in the Boise Basin; any man of any observation knew about the timber, but I went there as a *mining* and for the purpose of mining. It was supposed to be a good mining country and has been one of the most productive mining countries in the world.

Q. What was the attitude of the mining element with reference to this timber?

(Deposition of John Kinkaid.)

A. Well, that came up afterwards; I learned of that afterwards. I remember that while I was there that summer, and before I had sold my ten-stamp mill, that the timber was afire, on the other side of the mountain, on the Centerville road, and I mention this because that has been charged in this matter as showing a great deal of interest on my part, and I fought the fire there for a month; sometimes I fought it alone and sometimes I hired men, eight or ten men, and sometime when the fire was the worst, men came and helped me, and some I paid and some would not take pay, some citizens sent men to me. The primary object of my fighting fire was that if it came over on my side it would burn down my mill which I had sold, but for which I had not got my money, and the other object was to prevent that destruction and waste that any man would do, and I was a citizen there, and belonged there. I went to Mr. Bowen, took up this matter for Mr. Bowen for patenting that property in connection with himself and Mr. Goldtrack, I don't know what his first name was, and he gave me money for that purpose, and I deposited it in the First National Bank from time to time as he furnished it to me, and that was I think the only account I carried in the First National Bank at that time. I had carried an account before in the mining operations there, I had carried a good many thousand dollars and had done a good deal of business there. I was away from there 35 or 50 miles, and I had done a good deal of that business with cash only. That account was in the name of S. C. Bowen and

(Deposition of John Kinkaid.)

John Kinkaid, agent; it was an agent account, at least it was for that purpose. I closed that account about November or December, 1901, when I entered his ground for patenting, and now, I think I remember that I paid about \$1,900 for the land that I entered for him, and that would be at the rate of \$2.50 an acre.

Now, leading up to the first I ever heard of timber, or the timber locations, was when I was in Long Valley in 1900, and that is in Boise County, when I was campaigning up there in 1900; they told me then that that country was being taken up and quite generally by outsiders, and under the Timber and Stone Act.

Q. That was a valley other than the Boise Basin?

A. Yes. That was in Long Valley, and those entries were afterwards known as the Cobban entries, and were afterwards acquired by the Fayette Lumber Company. It is a matter of common knowledge that there were locations being made up there. In the summer or fall of 1901, Mr. Clapp, a Minnesota man, an elegant gentleman, whom I met at Boise, and one John Frazer came to me and said, "Don't you want to go into the timber matter"? And I said, "I don't know anything about the timber matter, and don't know as I do. I have always been in a mining community and I don't know as I want anything to do with timber," but they told me that they had cruised out a lot of that country up in the Boise Basin, and that there was some very good timber up there which I knew, and they said they

(Deposition of John Kinkaid.)

would file me for \$200, and I thanked them; and that was the first I remember of ever having anything to do with timber. I didn't know anything more about it until I was up in the Basin one time about November or October, 1901, with Mr. Ingalls a mining man from Texas. Mr. Ingalls was of the firm of Ingalls, Hoggins Brothers & Ford, owning a big mining estate in the Boise Basin above Grimes Creek. They had invested, perhaps, \$100,000 there at that time, and gotten property that was supposed to be very valuable, but it was what we called a "base" proposition; most of the ore in the Basin is free and can be milled on the ground. Mr. Ingalls' property was base, and was not free, and could not be milled in the vicinity; it was an ore that had to be smelted, and it carried a great deal of lead and zinc, and some gold, but it was not free, and it became necessary for them, to save their investment up there, to have a railroad in there, as that was the only way that that low-grade ore could be transported to the smelters. Mr. Ingalls, J. M., were his initials, was the active member of that firm of Ingalls, Hoggins Brothers & Ford, and they are bankers at Brownwood, Texas.

I was up there with Mr. Ingalls in the Basin, in October or November, 1901, upon some of his mining business. At that time or subsequently, I patented his ground, I think 6 or 7 lode mining claims for him, for which he paid me. I took up some of their mining patents that had lain dormant for about ten years to my recollection, and straightened them out in the

(Deposition of John Kinkaid.)

Land Office, and procured their patents, I don't think they paid me anything for that, but they were quite willing to do it, they were very good friends of mine, and I didn't charge them anything for that.

When I was up there with Mr. Ingalls in November or October, 1901, we talked the railroad business over and he was in favor of building a railroad into the Basin, and that is what we were going up there for, the railroad proposition for him and the mining proposition. He believed that he could promote the road and he knew their properties were worthless unless he did. As we came through Centerville one morning towards Boise, John I. Wells, this same John I. Wells, who has testified here, came to the rig, and Mr. Ingalls was paying for that, it was on his business, and he said, "I have missed the stage, and can I go down with you to Boise." That was some 40 miles to Boise, and Mr. Ingalls says, "Yes, you can go down if you pay for it," and he got in the seat and rode down to Boise with us. That is the first time I remember of distinctly knowing who Wells was. There was a great number of the Wells in the Boise Basin, five or six brothers of them, but this one, John I., I had seen him before, but I didn't know who he was. I was not acquainted with him, and going down to Boise I asked him what he was doing, and he told me that he had been working in the Twin Sisters mine, he said, "I met you up there at the Twin Sisters mine." The Twin Sisters mine is a mine run by a Colorado friend of mine named Lane, and I had frequently been there; I ate dinner there one evening

(Deposition of John Kinkaid.)

with the rest of the men at the mine, and there's where I met Wells. Wells told me about a mining proposition near Boise that he had seen several years before, and he got me so much interested in it that I proposed to him that he show me that proposition, and we went the next day to see it. I hired a team and we drove out north of Boise, I suppose it was in those hills where they do theoretical mining and Wells told me about an 11-foot vein out there that he and his father had worked on when he had first come from Kansas, six or seven years before. But it was strange to say that the vein was not over six or seven inches wide when we got there and when we returned to the stable, I went to pay for the team I remember and Wells insisted upon paying for it and we divided the fees between us, because he was ashamed of what he had showed me out there. That was my first acquaintance with Wells. Subsequently I had some business in Boise Basin either for Mr. Ingalls, or for Mr. Bowen, or for myself, I don't know which, or it might have been for somebody else, it was mining business anyway, and I there met Wells and Downs.

Q. (By Mr. GORDON.) When was that?

A. That was either in,—as near as I can place that, Mr. Gordon, that was very soon after this other trip, and it was either in October or November, 1901, and I had heard a story when I was there before that the Basin country was being overrun by outsiders, that that country was being colonized in a timber way; that people were coming in there from Wisconsin and Minnesota, and from elsewhere, and filing

(Deposition of John Kinkaid.)

on timber under the Timber and Stone Act, and that they were also locating homesteads, evidently for the purpose of taking timber, and that it was an outrage upon the Basin people, and they asked me if something could not be done about it. Mr. Ingalls took a very strong ground himself against it, he did not believe in them filing upon the timber. This was still in 1901. When I was there this second time, I was frequently there during that time on my business, I met Wells and evidently it was Downs with him; I don't remember if it was Downs, but it was Wells, and some other man who wanted to file me on timber, and show me timber, and I told them I thought I knew as much about that timber in the Boise Basin as they did; that I had worked all over that country and mined all over it for the last two or three years, and I didn't think I needed their assistance to show me the timber in the Boise Basin. They said that was very well and good, but they asked me if I knew where the corners were and I said, "No, I don't know anything about the corners, but I guess I can find out," and they joshed me more or less about it, and afterwards they came to me the next day, I think, and they said, "You better let us show you some of that timber," and I said, "Where have you fellows been locating people in this country?" and they said, "Up above Centerville," and I asked if they had been locating any below and they said they had not, and I asked them where the State lands were in the Boise Basin and they told me where they were. The State lands were supposed to be worth

(Deposition of John Kinkaid.)

about \$10.00 an acre. I don't testify to this positively, but it was my belief then, and is yet, that the State school lands, or some of the State lands in Idaho are limited in price to \$10.00 per acre, that is the minimum; that is what I believed then, and I believe it yet; but I told them if they could show me a quarter with plenty of timber, below Centerville three or four miles, south of Centerville, down Grimes Creek, and adjoining the State lands, or near the State lands, I would like to look at it, but that I would not obligate myself to pay them any filing fee unless I concluded to file, and under those circumstances they went down there and showed me the land. That was the time that I saw the land that I subsequently filed on.

Q. That was in November, 1901?

A. In October or November, 1901. I was up there frequently before and frequently after that and until the season closed, until the weather got too bad. I returned to Boise and nothing was ever said to me about filing until sometime after that Mr. Wells moved down there, or came down there, and he came and asked me if I would not file, and I told him "No," I would not file, but I told him that I would pay him for his time that he was out on that trip, but I would not pay him \$25.00, but I would pay him regular wages, and his partner, but he said, "If you don't file, there is no charge," and that was all that was said about that until I heard a great deal of talk about them locating people in the Basin, and about them taking the timber, and along about the first part of

(Deposition of John Kinkaid.)

December, there arrived in the Basin three or four fellows whom I didn't know at that time, but it was Arthur Anderson, Bert Nugent, Abel Edward Hunter. I knew Abe Hunter—and after they had been in town some time—I had met Hunter and seen them on the street together, and I had seen them at the old Overland Hotel there, they were drinking quite freely, that is Hunter, and Nugent and Anderson were drinking quite heavily, and that young man Ball,—I don't remember of seeing him with them; Harry Wells was down there at the same time I remember that now, but I don't remember of seeing him with them; he was one of those men that entered there sometime in December, but either John Wells or Ed Hunter brought those fellows up there, Anderson and Nugent, brought them to my room, I had no office, as I didn't expect to stay there, I was not practicing and was closing up the business that I had in the Basin, and they brought them up there to my room in the Coffin Building, sometimes called the Pioneer Building there on the corner, and they told me that they were going to file on timber and they wanted to know whether they had a right to do it, or not, and I told them that they certainly did have a right to file upon timber lands if they wanted to and that was what those fellows up there ought to do instead of letting people from Wisconsin and elsewhere take up the land; it was their business to take it up and they then told me that they had filed sometime before, and they had come down there then to prove up, but that everybody in the Basin said that they

(Deposition of John Kinkaid.)

had no right to prove up and that the man who proved up on timber land in the Boise Basin would be a liar and a perjurer, and that he would have no right whatever to the land, and that he would lose his money. And I told them that I understood that the law was the same as any other land law, that a man had a right to it if he had complied with the law properly, but that if they had commit perjury to get it they had better leave it alone, and they said they didn't want to do anything of that kind but they said it was claimed that it was mineral land; that question had been agitated a great deal in the Basin; it touched the pride of the people in that country for they had occupied it as a mining country for about forty years, and it hurt their pride to have it taken up as timber land, or agricultural lands or for any other purpose than mining. They believed that that was their heritage up there, they believed that it was only for mining, and we discussed that question very thoroughly as to whether it was mining ground or not, and I inquired of them whether that ground that they were locating, that they had filed upon, was down in the gulches, whether it could be placer mining, or whether it was up in the hills where it would likely be quartz mining ground, and they told me it was up off the placer ground, and away from there, and Arthur Anderson particularly told me where his ground was, that it adjoined his ranch, as he called it, a little place he had up there, with a garden, and that it was right near his placer claim, but that it didn't include any placer ground. I asked him if

(Deposition of John Kinkaid.)

he was getting it for the purpose of placer, and he said, "No," there was no placer there, and I asked him if there had ever been any prospecting there for lode claims, and he said nobody had ever found anything there. I went then to Mr. Garrett and got a copy of the Land Office's rules and regulations, which contained excerpts of law, as I had no law library there; my library was then at Cripple Creek, as it is yet; and from these rules and regulations I saw that Timber and Stone Act and the obligations and promises to be used under the same, and everything was there except the cross-examination, I don't think that is in the rules and regulations.

Q. (By Mr. GORDON.) Now, when was that?

A. That was in December, after these men Anderson and Nugent had been in Boise for several days, and I think it was the day before, or two days before they finally entered their claims, and paid for them, made final proof on their claims. That was what we always called it in the mining practice, an entry, or what I always supposed was an entry, and what bothered them the most was this: They believed they could not make a nonmineral affidavit, and I told them that was a matter of their own judgment, and conscience, and that all they had to testify to was that the ground was more valuable for the timber than it was for mining purposes. I gave them the rules and regulations to read for themselves, and they claimed that they had been misled; that John I. Wells had gotten them to file on claims and that they believed they had a right to do so and they believed

(Deposition of John Kinkaid.)

now that it was really mineral land, and that they had no right to enter it, or that no man had a right to take up timber lands under that act. They said that Carl Payne, I think that they told me that Carl Payne, who was District Attorney of Boise County at that time, a State office, or County office, under the State Government, had advised and stated that no man could honestly make a timber entry in the Boise Basin or elsewhere. I think that that was the first time I ever heard that. I know that that was told me either then, or at some subsequent time, and I know that it was told me also by Homer Granger, that Payne had said that, and had advised that, and they were afraid that if they made a timber entry or final proof for timber in any manner, that they would be guilty of perjury, and that they would be prosecuted for it, and I told them that as far as the taking up of mineral ground was concerned, to settle that for themselves, but I didn't think that land that had not shown anything in forty years under intense mining prospecting, as had been done in the Boise Basin, could be said to be mineral lands.

They came back to my place, two or three times, and they were very much excited. Mr. Nugent did most of the talking and Mr. Anderson said very little; he did, however, tell me,—I asked him about their money, I asked them if they had their money to prove up, and he said they had, and Mr. Anderson said he had gotten \$900 out of his last clean-up, meaning mining clean-up, and that he had enough to enter his claim, he thought. I told him when he came back

(Deposition of John Kinkaid.)

to ask me about it again, I said to him, "You don't seem to have any confidence in what I tell you; you are not paying me anything for this advice, and you had better go to someone you know, to the best lawyer in the State, go to anybody, and advise with him about it." He asked me if Mr. Hawley was in town and I told him I thought he was, and he said he knew Mr. Hawley and that he would do whatever Jim Hawley said was right. The principal thing that agitated them at that time was to get back the money that they were out, and if they didn't prove up on their claims, they said they were out the fees they had paid, to Mr. Wells and that they were out about \$100 upon the trip, either \$100 for the two, or they were out \$100 each, I don't know which, but they said they were out a lot of money on their trip down there when they had made their filing, and that if they didn't prove up that John I. Wells had to pay them back, and they said if they didn't make proof,—that Wells had filed a lot of other men up there and held them up for as much money as he had gotten out of them, and that he would have to pay them all back.

Q. (By Mr. GORDON.) Was that Mr. Anderson and Nugent said that?

A. Yes, they were together; they told it to me and repeated it over and over again, and they went away and subsequently, and I suppose in the afternoon of the day they filed, I don't know what day they proved up, but whatever day they proved up, John Wells came to me in the afternoon about one or two o'clock I think, and he said to me: "Those fellows have

(Deposition of John Kinkaid.)

proved up and they want some money to go home on; they are broke and want some money to go home on, and they still owe their hotel bill over here, and some other bills, and they think I am made of money," and he said, "I agreed to give them some money, and I agreed to give them \$300, they want \$150 apiece," and he says, "I would like to give it to them, but I haven't got it to spare; I have got to make my own final proof within a few days, and I haven't got the money to spare," and so, he said, "Here is \$275," or whatever it was he gave me and told me it was all he had with him; he gave me that money and he said, "You give that money to them because I told them it was to come through you," and I said, "Why did you do that"? and he said, "I wanted to get rid of them," and I told him I didn't want anything to do with the matter, and he said, "You see to it for me, and get me something to show for my money," and afterwards, at three or four o'clock in the afternoon, they came back to my room, Nugent and Anderson together, and they were very well pleased; they came and told me that they had entered and paid for their land; they said they were "damned" glad of it, that they had a right to that land and that they, up there in the Basin, should have it rather than some rank outsiders, and Mr. Anderson told me then, or before then, that he was going to hold that ground and cut the timber all himself for cord-wood, or for timber purposes, and he said, "Did Wells leave any money here for us"? and I said he had, and they said, "How much"? and I told them

(Deposition of John Kinkaid.)

he left \$275, but I don't think I told them that at first. They said, "We have got to have some money to go home on and he promised to see us out if we finished up this entry," and they said, "He promised to let us have \$150 apiece," and I said, "This is all I have got and I will divide equally between you," and I paid them the money, handed it out to them, or whatever you care to call it, and took a due bill for Wells, from each of them for \$137.50, I think, I can't give the exact amount, but I believe that is my recollection. I divided it equally between them just the amount he had left, and I took the due bills and they were signed; I think Mr. Anderson could write his name all right, and I think he could have written it then all right, but Mr. Nugent signed both due bills, and Mr. Anderson made his mark on his, and I don't know whether I witnessed it or not; but those two bills I saved and when I saw Mr. Wells again I gave him the due bills, and they thanked me and said they thought John Wells was a man of his word, that although he hadn't left them \$300 that he had agreed to, that he had treated them well anyway. Then they went away. I think I saw those men the next morning, at least Arthur Anderson, and he was sober and very gentlemanly, and I bade him good-by the next morning, and went home.

Now, previous to that, the day before their final proving up, whatever day it was, we will say December 10th, 1901, Wells had come to me and told me, and I think it was on the street, and I believed at the time that he really wanted to rush the filing that I

(Deposition of John Kinkaid.)

had talked about making, and really to enlist my sympathies and service with more or less, to get me to file, or get my filing fee, and he had asked me about this self-same matter, and about Anderson and Nugent; I don't know as he named those parties, or I inferred that it was Anderson and Nugent that was trying to get money out of him, but they never told me that they were trying to get money out of him, and I was the last man that would have told that; they either told him that they had the money or they led him to believe that they did have the money to make the entry, and Mr. Wells asked me whether he had a right to lend them the money, or not, to make their proof, and I told him that he had a perfect legal right to do so, and that they had a perfect right to borrow the money for that purpose if they wanted to, but I told him not to lend them money under any circumstances, for if he did, as I viewed it, because he would never get through with it if he started in to do it, and if he loaned one man money that he had filed, he would have to lend others, and if he loaned a great many it might raise the presumption that there was a fraudulent contract or agreement, which was absolutely prohibited under the law, but I would absolutely have nothing to do with them if I was in his place; and he said that he would not under any other circumstances. he would not think of doing it, but those were the first men he had filed, and that he was under obligations to see that they got their land, that if they didn't get their land, as they wanted to, that he would have to reimburse them and pay them

(Deposition of John Kinkaid.)

for their money that they were out, and for their coming down there, and that it would not only spoil all of the filings that he had made, and would bring down on him some 30 or 40 people, I don't know just how many he said now, but he said "A lot of people," and they would want their money back and damages, and Mr. Wells may have forgotten all about it, as he mentioned in his testimony here, but I remember it distinctly because it was my first knowledge of this matter, but I told him positively that while he had a right to lend the money, not to lend it to anybody, and he said that he would not think of lending it to anyone but those two, Anderson was good for it, and Bert Nugent was too, for he had worked underground with Bert Nugent for a year and that there was not a more faithful or honest fellow in that country than Bert Nugent, and he said if they hadn't been drinking since they came down there, they would have had plenty of money to pay for their proof, and I told him that under no circumstances to let them have the money.

Q. I will ask you as to whether or not from what Mr. Wells told you, you were led to think that he had entered into any agreement or contract for reimbursing them if they did not come through, or was that a moral obligation?

A. It was absolutely a moral obligation so far as I understood, but here Mr. Wells testified—he didn't seem to remember the stress under which he was placed at that time, or most of those first filings that he had made. He had a great number of filings

(Deposition of John Kinkaid.)

at that time, and if those first ones failed, those first ones were scared out of the Boise Basin, his occupation would be gone, his money would be gone, and he would be hounded to death by a great number of people for the return of it, if he didn't pay the money, and he was evidently laboring under a great stress at that time, and for that reason I was more positive with him, and because these men had come to him. They had never told him that they didn't have the money.

Q. Up to that time, the day of the final proof of Arthur Anderson and Bert Nugent, on December 10th, 1901, had you entered into any kind of agreement with any persons, or were you in any manner interested in procuring people to file upon lands or enter lands, which had been filed upon?

A. I had not, and could not have entered into any such arrangement because that was the first time I had ever seen Arthur Nugent or Bert Nugent, to my knowledge; I had likely passed them and maybe had saluted them, but didn't know who they were. I think they told me down there at that time that they had voted for me; the fact is if a man has an office, or has ever gotten an office, everybody votes for him,—after the election.

Q. Did you know at that time if anyone else had filed?

A. No, I didn't know of anybody filing and never heard of their filing until they came to my office or room, in December. I didn't know who had filed, I didn't know one man—I didn't know anybody had

(Deposition of John Kinkaid.)

filed. I never took Mr. Wells' timber business seriously at all, and I didn't think that he was filing many people until about this time he spoke to me about it and told me that he had filed a great number, and I think he said 35 or 40 people, and that he would be liable to them if it didn't go through.

Q. What was your next knowledge that you had with reference to the timber in the Basin, Mr. Kinkaid, or any connection with it?

A. I subsequently went up there; I had met Mr. Wells, I filed on my claim, and I made my filing upon the view that I had had of it in either October or November; the filing, I think, was in January, 1902. I don't know when it was. Soon after I made that filing or concluded to make that filing, I went to the Land Office, and got the filing papers, and spoke to Mr. Garrett about it, who was Receiver of the Land Office at that time; I presume that I prepared my papers myself, and I think that that was perhaps the first set of those papers that I saw outside of the book of rules and regulations, and after that I paid Mr. Wells the filing fee of \$25 and I asked him if I owed the other fellow that was with him when he showed me the land, I asked him if I owed him anything, and he said, "No," that they were acting together, and that other fellow subsequently proved to be Downs. I afterwards met him, and now that I think about it, about the end of the year or the first of January, I won't say which, but it was sometime after the Anderson episode, and I have tried since this trouble came up over this

(Deposition of John Kinkaid.)

timber, I have tried to remember when it was that William Sweet first spoke to me about the timber business, about wanting to buy some timber lands in the Boise Basin, and it was the latter part of December or the first part of January. Mr. Sweet was a mining man, a mining promoter and really a great trader and his habit of doing things was to make quick turns and quick mining sales. I had had quite a little business with Mr. Sweet prior to that time in a mining way. I had taken over from him the Mountain Queen mine on lease, bond and option, in the Boise Basin near Grimes Pass, and paid him some several thousand dollars for the option, and what he was out at that time, and had carried him for interest in the final outcome of the property; all together I expended something like \$12,000 to \$14,000 on that property and threw it up. Mr. Sweet didn't make any more money out of it, and I didn't, of course, and Mr. Sweet and I had spent the winter of '99, I suppose, maybe it was the winter of '98 and '99, and it might have been the following winter of '99 and '00, or most of the winters in Boise together. We had spent the winter of '98 and '99 there together, and we were very well acquainted, very intimate, and I am confident he had the utmost confidence in me, and I had in him in every way, and we were friends and sometime in the latter part of December, 1901, or the first part of January, 1902, Mr. Sweet asked me what I thought about his buying timber in the Boise Basin and I told him that I thought he had better let it alone unless he

(Deposition of John Kinkaid.)

could build a railroad in there, and he said he understood that either Ingalls with his Texas crowd, or the other company would build in the Basin, and that Moore's Creek could be run, in his opinion, that the timber could be gotten out of there all right. He said that he had seen the timber business in Michigan, and he knew that there was good money in timber, and no man had ever lost any money in buying timber lands, and so we joked about it a little bit at that time and subsequently he came to me, but I would not say whether it was in December, 1901, or January, 1902, and he said, "I wish you would look into that question and see if you can buy me some timber lands up in the Boise Basin, and I said, "All right, I will do it." And I said, "How much land do you want to buy?" and he say, "All I want is 2000 or 3000 acres or 4000 or 5000 so see what you can get," and I went to the Land Office and I discovered that there had been quite a number of claims entered in the Boise Basin and money paid for the land, and I quite likely got the names of those who had proved up on their claims and gotten the Receiver's receipts. I told him that there was quite a number of people had proved up and that if he wanted me to buy for him, to furnish me the money and I would see what I could do.

Q. (By Mr. GORDON.) When was that?

A. That was either the latter part of December or the first of January, 1902, I can't give those dates to save me, and I have no data now by which I can prove it. I will explain that later, but I haven't

(Deposition of John Kinkaid.)

the least bit of data to which I can refer; he subsequently brought me I think \$4,000, and said, "Go ahead now, and see what you can do," and I asked him what I should pay for the land and he told me to get it as cheap as I possibly could. He says, "I don't think those people will be very stiff on their price," and he says, "Under no circumstances, go above \$500 per acre, and I think I can stand for \$5.00 per acre, but I don't want to pay any more than I can help." I told him that the land would cost at least \$2.50 per acre to the Government, and he said, "That didn't make any difference," that land was worth what people could get for it, and that there was plenty of timber land in the country yet and that scrip decided what land was worth; he said he could buy scrip for less than \$5.00 a good deal, and lay it on that land; he said he had advised with his attorney and he knew that he could get it considerable less than \$5.00 per acre, and so I took his money and I either put it in the bank and if I put it in any bank I put it in the First National Bank of Idaho, that was the bank that I had always done business with it in the city, and they had always treated me very nicely there. And I endeavored to buy, and approach some of these people who had made their final proofs, or at least try to reach them, and I don't remember who it was whom I did reach now, but I found that the parties whom I spoke to about it, I think some of them were ready and willing to sell and I asked for their Receiver's certificates, or receipts, and I found out that they had

(Deposition of John Kinkaid.)

no final entry receipt; it was a plain receipt of the Receiver of the Land Office stating that he had received from them \$400, to be applied upon the entry if it was finally allowed, and no final certificate of entry or Receiver's receipt in the usual sense, as in a mining entry, or anything of that kind, with which I was familiar, was issued. I reported that to Mr. Sweet and told him that I would not take those titles, and I would not advise *me* to take them at all that way, and he said, "Why that is all right, you go ahead and take that title, and take those titles," and he said, "You are not my attorney," and perhaps I was somewhat forward in giving my advice where it was not asked, as an attorney, as a lawyer is likely to do, and he said, "I have consulted my attorney about it, and I am enough of a lawyer myself to know that I have a perfect right to buy, those people have a perfect right to sell and you go ahead and buy it," and I told him that I hadn't that I would do that, or would not do it, and I told him that when those people got their final receipts, which they undoubtedly would, that I would take the matter up and he said, "All right, any time will do," but he said he wanted something to do business on, that he wanted a "starter," he wanted the nucleus of the deed of something to sell, so that he could go east and sell it, and I told him that there was nothing at that time that he could buy in proper shape for a "starter" or otherwise, then he told me that he would get his money ready and have it on hands to buy when these people should get proper receipts,

(Deposition of John Kinkaid.)

but he well knew or believed that final certificates of entry had been issued in proper form to some of those people and others that I had not seen, and for me to look into that matter and if I found any who had their final certificate, I should buy them; in the meantime that he would get me as much money as he could to carry through the deal. He subsequently brought me over money and told me to keep quiet, that he didn't want anybody to know what he was doing; that he was going into the deal because there were men in town there who were perfectly willing to go into any deal in which he would furnish all the cash, but that he didn't want any partners of that kind, and sometime along there, I don't know when it was, I asked him what I was to make out of the thing, and what interest I was to have in the deal, and he said, "You are not to have any interest in the deal unless you put up for it," and he asked me if I could furnish half of the money, and I told him that I could not do that, I didn't want to go into it, and then he said, "Well, you have no interest in the deal," and I said, "Then what do I make out of the purchasings of these claims?" and he says, "I will pay you well for every claim you buy, you know I will do what I tell you." And I knew Mr. Sweet to be a very liberal man and also an honorable man in deals, and in trades, and that was perfectly satisfactory to me, and under those circumstances I did from time to time try to find parties who had paid for their final proof, and who had gotten final certificates, but I didn't find anyone

(Deposition of John Kinkaid.)

who had, or who wanted to sell. Some of them might have had their fival certificates when I asked them, but the first thing I asked them was if they wanted to sell and there were very few of them who would, and I don't know who those men were, I haven't the least idea. If I had a list of those men I might recognize them, but I don't know who they were. And he subsequently came to me and he got some of that money back and he said, "You are not very swift in buying these claims; I need some of that money." And some time along about the first of the year, as I remember it, 1902, and I don't know whether it was—it must have been in January, I learned that Governor Stunenberg and Sweet were becoming interested in some way together in trying to get up a promotion or deal to sell, to buy and sell the timber lands up in the Boise Basin. When Mr. Sweet mentioned it to me I rather resented it for the reason that I was confident from what he had told me that Stunenberg was not putting up any great amount of money for the purpose of buying lands, and I felt that Stunenberg had been taken into the deal where I might as well have been taken in, upon the same terms. Mr. Sweet explained to me, however, that Mr. Stunenberg could make the deal much more readily than I could, he said, "You are no promoter, and you could not sell this property and I don't know whether Stunenberg can or not, but I think he and his associates to whom he would dispose of this property, at least his reputation as Governor of the State, will very

(Deposition of John Kinkaid.)

greatly aid him, and you must not think anything of this; I will pay you for what you do and for what you have done, and that will be all right." Of course, we had this conversation aside from Governor Stunenberg. The first that I had to do with Governor Stunenberg was when Mr. Sweet brought him to my room I think—

Q. (By Mr. GORDON.) When was that?

A. Sometime in January, I should say, or February, 1902, and they told me together there that they had gone into together to take up this promotion, that they were being equally interested in it; that Mr. Stunenberg would put in a part of the money and Mr. Sweet would put in part, and they would get enough together to buy what they called a "starter," something that they could take east and sell, and something that would warrant them in believing that having those claims on hands, they would be able to get the surrounding claims which had been proved upon, or which should ever be proved upon thereafter. Mr. Sweet claimed to understand the timber business and he said the first men who got the first bunch of land in that district would be able to control the rest of it, whether the other parties wanted it or not, because he said there was not room in the Basin, or enough timber there for but one big operation, and that it would have to be a big outfit that ever could do anything with it, because until that railroad was built it could not be certain that it was going to be built, and that he might have to build a railroad himself, and it would

(Deposition of John Kinkaid.)

have to be promoted as a proposition in connection with it.

Q. Up to that time you learned that Mr. Stunenberg was connected with it, had you bought any claims at all?

A. No, I had not bought any claims; they had deposited with me, that is, Mr. Sweet had left with me several thousand dollars, I say several thousand dollars, I presume there was \$4,000 at one time, and I think \$3,000 at one time, and I don't pretend to give the dates of these at all.

Q. (By Mr. GORDON.) You don't pretend to give the dates, but was this prior to your learning of Mr. Stunenberg's connection with it that he gave you this \$4,000 and \$3,000?

A. No, he gave me the \$4,000 at least,—no, he gave me \$4,000 at one time, before Mr. Stunenberg came in.

Q. (By Mr. GORDON.) And you would not be certain about the \$3,000?

A. Now, I do remember that \$4,000 was \$5,000; he brought me \$5,000 one day and left it with me to buy land with, then he said, "Give me \$20.00 out of that." I gave him \$20.00 out of it, so the amount that I got from him at that time was \$4,980, and I think I went across to the bank right across the street and deposited that to my credit over there.

Q. (By Mr. GORDON.) Did he give it to you in cash or a check?

A. He gave it to me in cash; it was in big bunches of money, and I took it across and deposited it in

(Deposition of John Kinkaid.)

the bank. After Mr. Stunenberg came into the transaction, Mr. Stunenberg seemed to resent my having anything to do with it, even more than I had resented his having anything to do with it, and he didn't want to deposit any money with me, and I don't think he ever did leave any money with me, but Mr. Sweet told me to settle with the Governor, or give the Governor what money he wanted and let him deposit it as he saw fit.

Q. (By Mr. GORDON.) Did that instruction that you received from Mr. Sweet with reference to giving Mr. Stunenberg the money as he saw fit, have reference to the \$4,000 that he gave you, or was that confined to this \$3,000?

A. It had reference to any amount which Mr. Sweet had left with me; I think that subsequent to Mr. Stunenberg going into the deal that they went to some bank and I have heard since that it was the Bank of Commerce that they went to, and borrowed either \$7,000 or \$7,500 together, in order to have this money on hands to buy property and their idea was that it would take anywhere from \$10,000 to \$20,000 to get what land they would have to have in order that Mr. Stunenberg might go east and sell the property, something that he could call to the attention of eastern people, a lumber company, something that they would be willing to buy, and something out of which they could make a profit, because he said as soon as they turned the thing over they would be out of it, and I think that perhaps that \$4,000 that they gave me, when they brought that up to my place

(Deposition of John Kinkaid.)

and gave it to me they said, "You take care of this and deposit it in the bank because we don't want you to keep it here because you have no safe," and I got that money and I don't think I ever got any other money from Mr. Stunenberg and I think I got that from Mr. Stunenberg and Mr. Sweet together, and I took that across to the bank; I didn't get any more from Mr. Stunenberg at that time; I am telling these things as they come to my mind; I am trying to testify now as I remember it.

Q. (By Mr. GORDON.) Now, this first \$4,000 that you have been talking about last, that you said you got from Mr. Stunenberg and Mr. Sweet, that does not have reference to the first money that you received from Mr. Sweet amounting to \$4,980; that is an additional \$4,000?

A. Yes, sir, and there is another matter—Mr. Sweet went away and that is a matter that I don't think the Government or any of you brought out at the Borah trial, or any of the other matters; I have never heard it mentioned, but there was \$3,000 sent me by Mr. Sweet before,—I think that was before Mr. Steunenberg ever went into the deal.

Q. (By Mr. GORDON.) Then, that made upwards of \$8,000 that you had gotten from Mr. Sweet before Governor Stunenberg went into the transaction?

A. Yes, about \$8,000, or it might have been \$9,000, but when I didn't buy those lands I returned most of that money to Mr. Sweet when he came back for it. Now, when that \$3,000 was sent me from

(Deposition of John Kinkaid.)

the east, somewhere, and by the "East" I mean somewhere east of Boise, Idaho, and I don't know where it was, but Mr. Sweet sent me that money thinking that I was buying land, because he had instructed me to do so; he had only left a small amount of money with me, and when he came back from that trip wherever, and whenever it was, I had not used that money and I gave it to him from time to time as he asked for it, and I gave it to Mr. Stunenberg, if he was in the deal at that time. I know this, that as soon as Mr. Stunenberg came in, all of the funds were turned over that I had to Mr. Stunenberg; he didn't want to entrust any money with me, and he didn't leave any money with me at that time. I had known Governor Stunenberg but very slightly before that, but we had never had any business transactions of any kind, but he had been the Governor when I came into the State, and for sometime afterwards, and I had met him in his official capacity only and in a friendly way, and I must say that he had been extremely courteous to me, and I have always had the greatest admiration for Governor Stunenberg, and after I came to know him well I had the greatest liking for him, but that was afterwards, and quite a time after January, 1902, that I became better acquainted with him.

Q. (By Mr. BUNDY.) The bank account shows a deposit of February 10th, 1902, of \$4,480, and I was wondering whether that \$4,980 was \$4,500, was that a mistake the first amount. I will show what purports to be a copy of the deposit made by you in

(Deposition of John Kinkaid.)

the First National Bank, and I notice it is \$4,480 instead of \$4,980, weren't you mistaken in the amount?

A. I don't see that that makes any difference, but since you called my attention to it I believe that it was \$4,500 that I had in mind; the amount which was brought to me was in bank packages of perhaps \$1,000 or \$500 packages, and my recollection attaches now more to the \$20.00 which I drew out of there and gave to Mr. Sweet of his own money, than it does to the amount, the other amount. I think the date of February 10th, is the correct one, I think that would be the amount and the date. But my recollection refers more to the \$20, than it does to the larger amount.

Q. (By Mr. BUNDY.) Now, I suppose probably the material thing is to find out what ultimately became of this money and whether you bought any titles with it?

A. Ultimately I returned every dollar of that money that I got from Mr. Sweet, or from Mr. Sweet and Governor Stunenberg, to either Mr. Sweet before Mr. Stunenberg came in, or to Mr. Stunenberg or Mr. Sweet after Mr. Stunenberg came into the deal.

Q. Did you buy any titles at all from any entrymen or entrywomen, or pay out any money to any entrymen or entrywomen out of those funds you have testified to before June 1st, 1902?

A. I didn't buy a title, and it was very unsatisfactory to both Mr. Sweet and to Mr. Stunenberg, and while Mr. Sweet and I were very intimate

(Deposition of John Kinkaid.)

friends, and thought a great deal of each other, as I understood it, Mr. Sweet lost patience with me, he said that I was not a real estate man at all, and I told him that I would admit that and he told me that I was too conservative, and that I was not enough of a rustler, and I joked him a good deal and said some very sarcastic things to them about it, about their going into the timber business, or their selling something that they didn't have or hadn't bought, and while I think Mr. *Sweet* were on very good terms as we were before, in a general way, he never wanted to transact any more business with me; that was the last business we ever had as far as I can remember now.

Q. (By Mr. GORDON.) When was that?

A. That was in the early part of 1902, and must have been in January, February, or March, and maybe it ran up until the first part of April. I know this, and if I don't cover the ground, you can ask me any questions; I know that I tried there for some weeks to find somebody who had claims to sell, who had really a certificate of entry, and I didn't find anybody, and afterwards, sometime during that time I discovered that no one had any final certificates of entry, and those people who had entered up from the Boise Basin,—and I had believed that they had only refused in some instances to give final certificates, but afterwards, it was discovered that there was a general order as I remember it, applying to properties all over Oregon, and there was a great deal in the newspapers at that time about timber frauds in

(Deposition of John Kinkaid.)

Oregon, and it seems that a general order had been issued, notifying all entries that they would take all filings and that they would take the money, but they would not issue the final certificates of title, and afterwards that final order was revoked as to the Boise Basin, I think, or as to Boise County and released the Fayette, as I understand it, at least I was told it. I learned that at the Land Office from Mr. Garrett, or some of them; I don't remember who, and I don't know who the Register of the Land Office was at that time, but I think it was Mr. King; I learned it from the Register or the Receiver that there was a general order of that kind; and I quit looking for people who had things to sell for I knew that they had nothing that I could buy, and I reported those facts to Mr. Sweet and to Mr. Stunenberg, and I was getting ready soon after that—I suppose I had better explain it fully; there was a mining excitement brought about in the interior of Idaho, called the Thunder Mountain excitement; that really occurred in the fall of 1901; there had been an old mine out there for several years, it had been working, but the excitement began and the boom started, and the rush in there began when it was the most difficult; I don't know of any more mountainous, rugged, or forbidding country in winter or a more difficult country to traverse in winter, and I have been over most of the Rocky Mountain District, than the Thunder Mountain district in Idaho County, Idaho, and when the snow is the deepest and the place the farthest away, and it is the most dangerous to life and limb to get

(Deposition of John Kinkaid.)

into an alleged mining country, is when the boom is the strongest. During the latter part of November, when the snow began to get deep, that boom in there started up and it was carried on all that winter, and people started in there with hand sleds, and traveled for weeks and months, and months, at a time, to get in there, and it was believed that a great mining district had been discovered, and I stood it as long as I could, and finally I found that I wanted to get into Thunder Mountain just the same as anybody else, but I wanted to wait until spring, and go in decently and properly, for there was nothing but trails and no road in there, you could not get anything but a big horse in there anyway in the summertime, and in the winter it was impossible, and the result was that there were a great many mining deals made in Boise, and Boise was the headquarters for mining deals in the Thunder Mountain district in the winter of 1901-02. The next station for the sale of Thunder Mountain properties was Pittsburg, and when a man could not sell his property in Boise, he went on to Pittsburg, and if he had sold it to a Boise man or a dealer who was in Boise, that dealer likely took it to Pittsburg and sold it there; that is where most of the money came from; it was a lode mining proposition and supposed to be immensely rich, and having been in mining excitements and mining countries since '77, I desired to join that rush into the Thunder Mountain district; I had been interested in making some small deals in the Thunder Mountain district in a very small way, and on the side with others I had

(Deposition of John Kinkaid.)

made a little money, but not much out of it; I had seen others make a great deal and had handled some of their money for them and helped them make their deals, and I concluded I would go just as soon as I possibly could, and I waited some little time, I should say something like eight or ten days to complete my own filing, my final proof upon my timber claim which I had filed on, and which was down with the State lands where I supposed I would get \$10.00 per acre for it when I should sell it, if there was ever a sale for it, and I thought I would get at least that; I wanted to keep that as an investment, and I think I entered my claim and made final proof on the 11th day of April, and on the 16th day of April, 1902, I went into Thunder Mountain myself. I had previously sent one party of two men in there at quite an expense, and I told them that I would follow, or come in by another route and likely to get there before they did, and I know that I had settled up and returned to Mr. Sweet and Mr. Stunenberg every dollar that I had ever gotten from them, and dismissed the purchase of timber from my mind in every way before I went into the Thunder Mountain district, and sometime before I proved up on my own claim, and I didn't quit under very friendly circumstances, because I told them I didn't want anything to do with the deal, and they were afraid that I would make something out of it.

Q. What was the date of your departure for Thunder Mountain?

A. The 16th day of April, 1902; I was 22 days on

(Deposition of John Kinkaid.)

the road with a hand sled, on the trail in the snow, and I met about 5,000 other people who were doing the same thing, and I met my own party up there.

Q. Now, up to the time you left for Thunder Mountain, had you purchased a single claim of any entryman or entrywoman in the State of Idaho?

A. I had not.

Q. Had you paid to any entryman or entrywoman any money up to that time? A. Not one dollar.

Q. Had you returned to Mr. Sweet and Stunenberg any of the money which had been given you for the purpose of buying timber claims if any were to be found?

A. I had returned all of it, and I want to say that those amounts that I returned to Mr. Sweet were likely returned to me, that is, say a particular thousand dollars that he left with me, and I gave it back to him when I told him that I didn't purchase any claims, and he might have given me the same thousand dollars again.

Q. How long did you stay in Thunder Mountain?

A. I stayed there and saw the District; I went there to practice law, that is, I was going to practice law, and buy mining property, and deal in the mining business. I had prepared everything for that purpose, except that I could not get in anything, but I was going up into the District and was going to stay there, and I was going back out and get my stuff, and go back in there; I examined the District very thoroughly, and worked all over it, went all over it on snow shoes, and went over it where it

(Deposition of John Kinkaid.)

was bare, there was a lot of the district that was bare when I was in there, of snow, there was plenty of it, anywhere from ten to fifteen feet of snow and whenever anything had been discovered I examined it, and I examined very thoroughly the Dewey mine or Caswell mine, which had been sold, and Mr. Tom Reed was the superintendent of it there, and he was a very good friend of mine, a very close friend of mine, and he showed me that mine very thoroughly, and told me about the District, and I went very largely upon his judgment of the district, and upon what he gave me an opportunity to see, and while I have been in the mining business, I have always paid out my money on my own judgment, and always have been willing to do it when I have had it; I decided that that district would never made a valuable mining district, and although I made some locations there, both the men I sent in there had made a lot of locations, and were making a lot of locations for me, and although I held those claims for two or three years afterwards, and spent money on them all afterwards, I never believed they were any good, and never tried to sell them, and never did anything with them, and I went out of the District by another route and came back to Boise, and arrived there the first day of June, 1902.

Q. Now, during the time you were in Thunder Mountain, did you have anything to do whatever with the purchase of timber in the Boise Basin or elsewhere in Idaho?

(Deposition of John Kinkaid.)

A. No, you might as well have been in mid-ocean. You could not deal; there was no communication except by foot.

Q. Before you left for Thunder Mountain, state as to whether you learned that Mr. Sweet had sold out?

A. Mr. Sweet had sold out to Mr. Steunenbergh.

Q. Or to Mr. Palmer, or to anybody else?

A. Yes, I had heard that they had made some deal.

Q. Did you know anything about the terms of that deal?

A. No, that was a thing that they would not communicate to me under any circumstances because I was not attorney for them and they thought that I wanted to be in on that deal.

Q. Do you remember of a man by the name of Dennis Thornton reporting to you between the 1st and 10th of April, by letter or message from a man by the name of Palmer?

A. I remember that Mr. Thornton came to see me and he came and asked if I had a plat or a plat-book for him and I told him I had not. Whether he had a letter from Mr. Palmer or who it was I don't know, but it might have been that he had a letter from Mr. Palmer and I don't know whether I knew Mr. Palmer at that time or not, or when it was I don't know. I think he came there and bought some timber, and I think he went up into the Boise Basin and looked at it.

Q. Did Mr. Steunenbergh leave any word with you

(Deposition of John Kinkaid.)

in reference to Mr. Thornton coming?

A. Mr. Steunenberg left a letter there, an envelope, for a man who would call for it and he says, "They will send somebody to call for that letter," or it was a package. My recollection is that it was a little package, an envelope, say, but it was a large letter and I think quite likely had a plat in it. That is a matter of judgment more than a matter of recollection now. It maybe had a tracing map in it.

Q. That was some little time after you had learned that some deal had been made or was pending with eastern people?

A. I inferred it was. I know that when Mr. Thornton came to me and asked me for a map or plat-book or something of that kind, that I didn't know what he wanted or what it was, and I told him that I hadn't anything to do with that matter, and he says, "You must have, there must have been something left here for me," and then I remembered that Mr. Stunenberg had left something there for a man who would call, and Mr. Thornton was a little bit hurt because I didn't know his name, but I had not had it given to me and I had no information. I took the "Idaho World," published up in Idaho City, in which those applications were published and he wanted to know what land was being located up in there, or was located in the Boise Basin, and I gave him some of those newspaper clippings. I think I gave him some of the old ones.

Q. Did Governor Stunenberg live at Boise or Caldwell?

(Deposition of John Kinkaid.)

A. At Caldwell, thirty-five miles below.

Q. And state whether he spent very much time in Boise at that time?

A. I didn't see very much of Mr. Stunenberg. He was a man whom you could not tell when he was coming or going.

Q. Now, I think you have covered the ground very thoroughly up to the time of your going into Thunder Mountain; now, after you returned from Thunder Mountain, June 1st, 1902, did you have any conversation with Mr. Stunenberg about any agreement you had with him in reference to buying titles?

A. Yes, I did.

Q. Just state that.

A. Sometime after I returned, I don't know how many days Governor Stunenberg came to see me because I was really sick. Of course, I was going about in a way, but I was staying in my room. The trip up there had been too much for me, and he came to see me and said to me, "John, you are very hasty about what you said to us about going into the timber deal, and, of course, if you don't put up in these matters you can't expect an interest or anything of that kind in a deal, but I think you understand this business much better than I do, and I wish you would purchase this timber land," and he said, "I have entered into a very binding contract with some eastern people to furnish them a very large amount of timber, and I ought not to have made such a contract, because I was required to guarantee that I would get a large amount of tim-

(Deposition of John Kinkaid.)

ber, and I don't think it is up there."

Q. Do you mean timber or timber land?

A. I mean timber land, and I think that I have heard of his entering into a contract of that kind before, but at that time he told me, he said, "I would like to have you see what you can do for me in buying timber lands in the Basin so that I can make my contract good," and I told him that in the first place I was a lawyer, but was not practicing, and in the next place I was not a real estate man, and didn't want to go into that business; that I hadn't satisfied him and Sweet before when I had tried to purchase land when there was nothing to purchase and I didn't think I wanted anything to do with it, and he didn't say much about it then and went away. Mr. Stunenberg was a man who could always listen well, but always let the other man do the talking, and a man of very few words himself. You would not realize it, but usually the conversation was mostly on one side. And at the first interview I had with him I didn't want anything to do with it, and I was getting ready to go up to Atlanta, a mining district up in another county there, and there was some good property there, and I was going to go into the mining business there and I didn't want anything more to do with the Basin. I had lost lots of money up there. The next time he *was me* he asked me if I had thought better of buying that land for him and finally there was an agreement entered into like this. He said, "Go ahead and see what you can buy some of

(Deposition of John Kinkaid.)

those lands for, and I will pay you for whatever you do," and I said, "Well, what do you think you ought to pay me," and he said he didn't know about that, and "See what trouble it will be and we will agree upon that afterwards." And I don't remember what was said, but finally he came to me one day and brought me some money in currency, and I think it was twenty-five hundred or thirty-five hundred, or something of that kind, and he said, "Now, I want to leave this money with you and I want you to go out and buy some of that land for me," and I kept the money. I don't know whether I deposited it, now or not; that was sometime after the 1st of June, and if I did deposit it, the bank account will show it; the deposit would be early in June and the probabilities are that that is the money.

April 6th, 1909.

At 10 o'clock A. M., met pursuant to adjournment. Counsel for parties being present, whereupon Mr. John Kinkaid proceeded to testify as follows:
(By Mr. BUNDY.)

Q. Proceed, Mr. Kinkaid.

A. As I remember it, I had come down to the first part of June, 1902, after my return from Thunder Mountain, when Governor Stunenberg came to me and spoke to me about the purchase of the timber lands in Boise Basin tract. At the time that he gave me this money, of course, we discussed the price that he could pay or wanted to pay for it, and I asked him how much he wanted to pay, what he could pay for the property, and he said

(Deposition of John Kinkaid.)

that he had entered into an agreement whereby he had secured parties to purchase any timber lands that might be entered in the Boise Basin, provided he could get enough for a decent timber operation, and provided that the land wouldn't cost in any case to him more than \$5.00 per acre. He said that that was his maximum amount that he could possibly pay, and if he had to pay more he would have to lose whatever he paid. I told him I didn't think that was enough, didn't think he could get the timber land for it, and he said he thought it ought to be bought a good deal cheaper, because scrip was selling cheaper and he understood the lands were selling cheaper elsewhere than that. That there was one thing certain that he couldn't pay any more, and that if he could pay me anything for purchasing the timber I would have to get it for less than that, and he then asked me what I would charge him, and I told him that I never had done any work of that kind and I didn't know what it was really worth, but I thought that it would be impossible to get that stuff at that rate, and he said I would have to get it a good deal cheaper, and we finally agreed after a lot of conversation on the subject that I should get that land, buy it upon my own account for as cheaply as I possibly could, and that he would pay me immediately upon my getting a deed,—he would pay me \$5.00 an acre for it, or \$800.00 a quarter section. And he said that I had better begin as low as I possibly could, because I couldn't ever lower the price afterward, and that

(Deposition of John Kinkaid.)

the probabilities were that the price would go up, and that I would have to pay more instead of less than I would start out. That seemed very reasonable to me, and in fact it proved to be the fact when we went first and—there was a good deal of agitation about the timber in Boise Basin and elsewhere, especially over the State of Oregon, and people were anxious to sell, and it was for that reason, as I understand it, we got the first timber quite cheaply. I was unable physically to go about town, and unwilling to do so, a great deal at that time, and I went to my friend Mr. Pritchard, who was practicing lawyer there at Boise, and was also engaged in the real estate business, or advertised to do real estate business, and he had a partner—I have forgotten his name now—that was in the real estate business, and either had him then or had him later. I think he had him then and I thought perhaps that would be in his line of business, and I asked him if he would endeavor to make some of those purchases, and he said he would, and I asked him what he would charge me, and he said he thought he ought to have a good commission out of it, and he would do what was right with me if it was my personal affair. I told him it was, because if I purchased anything I had to get it within a certain price, and while I might make something on some, I might have to pay a good deal more for others and might make nothing on the others, and I told him to buy as cheaply as he could, and under no circumstances to pay over \$800.00 a quarter section

(Deposition of John Kinkaid.)

for timber lands in Boise Basin. I had a copy of the "Idaho World," a newspaper in which these applications for entries had been published. I think I kept a file of them in my office, and I made up a list of all the entries that were in Boise Basin, or in that country, that had been published in that paper for, oh, six or eight months previous. I just pasted the notices on applications in a small book—blank book—and I think I gave that to Mr. Pritchard, at least I showed it to him, and asked him to see some of those people, and I was surprised to see that there was so very few of them that I knew. I believe that there were more people belonging to the Boise Basin tract whom I did know that had applied for timber up there and secured it, but it turned out most of them were Boise men and women and residing there in Boise. I left with him what money I had and told him to see what he could do for purchasing that way. At that time I did not attach much importance to it, because I didn't suppose that there would be a great deal of that timber that could be bought at that price, but we fixed upon some amount, and he said he would charge me whatever he *would charge me whatever he* would charge any other client. I was inclined to believe that he would favor me. I told him he needn't do that, because I wouldn't handle it a bit longer than I was making something out of it, and there was no definite amount that I had to buy of it, and I wanted to see him make something out of it as well as I did. We agreed upon some amount, however, I think before

(Deposition of John Kinkaid.)

he had done any work. He didn't purchase for some time. I don't know why it was now, but after a time he began to turn in some titles to me. In the first place, Governor Stunenberg wanted me to take the titles to myself, and convey them to the parties or party whom he had secured to buy timber land—with whom he had made his deal, as he called it, and the parties whom he had secured east to furnish the money with which to purchase these properties, and it was also agreed that there should be warranty deeds made, and I didn't think I would take the deeds myself and then made warranty deeds over for all of their lands—while others might sign warranty deeds that way that would be binding that I didn't care about doing it on lands, unless I was making a considerable out of it, and then he told me to take the deeds direct to A. E. Palmer, of Spokane, Washington, and I think I had seen Palmer before that, before I went to Thunder Mountain. I think I had seen Palmer—possibly I had met him. I don't think I had, not positive about that, however, because I did meet Palmer afterward at sometime when he was there and talked to him a very few minutes, and I can't fix the time as to when that was, or what we talked about at the time.

Finally, I think it was about the middle of June, and that's only the impression, the deeds themselves should show when that was, titles—Mr. Pritchard began to get some titles. I had told him to let it be known to some of those entrymen and to all that he

(Deposition of John Kinkaid.)

could that he would buy timber land, but not to run after anybody, or go out of his way to get it. He secured some deeds, exhausted the money which I had placed in his hands, and he got those first titles, and I would say he got a few of them for as low as \$650.00 and then they jumped up to about \$700.00. Governor Stunenberg paid me \$800.00 apiece every time I turned over a deed for a quarter section of land to him. I think some of those first deeds that were given were warranties, and some were quitclaims, and Mr. Pritchard and I discussed the matter and decided that a quitclaim deed would transfer the title as well as a warranty under the law in that State, and that that was sufficient, and some of the parties said they didn't want to give warranty deeds.

I think there was one or two cases of that kind.

Governor Stunenberg, after I had in something like 8, or 10, or 12 deeds, and he had paid me at the rate of \$800.00 each, wanted to know of me what I was paying and I told him that I had been able to get them cheaper than I thought I would, that those had cost me about \$700.00, as a rule, and he said *they* you are making something out of it, and I said "yes"; and after that time he would not pay me any of the money that I paid out, unless I had already gotten a deed for it, and presented it to him. After that I bought every title that was purchased with my own money, took the deed in the name of Mr. Palmer, and turned them over to Governor Steunenberg, and got my money for the deed, as I delivered it, but instead of paying me \$800.00, he paid me

(Deposition of John Kinkaid.)

\$700.00 at each time, and for each title, saying that he would reserve the other amounts and pay it to me all in one time, and that it would amount to something to me then, whereas it wouldn't amount to so much if I used it as I went along. From that time on all payments were made, I think, in multiples of \$700.00 for a long time.

Mr. Pritchard purchased from *time for me*, and I paid him from time to time what he charged for his services; most of the titles that were secured in the Boise Basin tract of timber lands that is involved in this case—that is in that year and some time in the following year in 1902 and 1903, I purchased mainly through Mr. Pritchard as my agent and attorney and real estate man, you might say, something like, it was either 99 or 100 or 101 claims, in Boise Basin, or quarter sections of timber land, taking the title all in Mr. Palmer.

Now, there were some of those titles that I took myself, I purchased myself, but when Governor Steunenberg wanted me to buy the property, I asked him why he didn't buy it himself. He said the price would be run up on him too quickly, and they would know he had made a big deal, and it wouldn't do. I then told him that if I purchased at all and took my chances upon making anything out of the property, that he must keep out of the market, and not make any purchases, and the same rule I made with Mr. Pritchard. I didn't let it be known that I was buying at all, and I told Mr. Pritchard not to say that I was buying, but to say that he was buying—

(Deposition of John Kinkaid.)

that he was buying to take the deeds to Mr. Palmer, so I didn't let it be known that I was buying at all, because that would have run the price up on Mr. Pritchard, which would have been running it up on myself, but there were some parties came to me—I can't remember them now—and I bought their property and paid them for it, various sums and amounts, but always bought outright and always paid in cash in full for every claim that I bought myself individually, or bought through Mr. Pritchard. I was away from Boise a great deal during that time, that is, especially in the latter part of 1902 and in 1903, and so on, and Mr. Pritchard was looked to as the man that was buying timber land in Boise Basin.

That closes up that transaction. That was what Governor Stunenberg had agreed to get for Mr. Palmer, and afterwards I learned that Mr. Barber and Mr. Moon were engaged with Mr. Palmer, or were furnishing him the money, or something of that kind, and afterwards, of course—I don't know when that was—the Barber Lumber Company was organized, and it was a matter of common report in the newspapers and everywhere that it was for the purpose of purchasing and taking over the Basin timber lands, which meant the timber lands which I had secured in the name of Mr. Palmer. Those things I didn't understand at the time fully. Of course, I don't suppose anybody did. I know that I knew about it afterward when it occurred.

Q. Now, Mr. Kinkaid, going back to the time

(Deposition of John Kinkaid.)

when you learned that Mr. Palmer had become interested in some way with Governor Stunenberg, when Mr. Sweet had dropped out of the deal, I asked you as to whether or not at the time you took any part in the agreement, transfer or sale, whatever it was, between Governor Stunenberg and Mr. Palmer?

A. No. I didn't, and I didn't understand that there was any sale of anything, because they had been so exceedingly anxious to get something to sell—to purchase something that they might sell that, and I knew that they hadn't got anything prior to my leaving Thunder Mountain, and Governor Stunenberg told me after I came back, and possibly they told me—either he or Sweet told me—before I went away, that they had secured a man who would purchase the timber when it was ready for purchase.

Q. At or about the time you came back from Thunder Mountain, or at or about the time you made arrangements with Governor Stunenberg to buy this timber, state whether or not you learned that final receipts were or were about to be issued?

A. I don't remember what was said to me about the final receipts being issued after I came back from Thunder Mountain, because when I went away to Thunder Mountain I understood from common report, and it was in the newspapers, I think, too—at least I understood that the general order which had prevailed had been revoked so far as the Boise Basin and the Fayette River was concerned—part of Boise County was concerned—that was it was those two districts are in Boise County, and I sup-

(Deposition of John Kinkaid.)

pose that a great number of those people, or all of those people had the final certificates at that time. Of course, whatever the records show is the fact. It is my belief now, that I took it for granted that those certificates had been issued.

Q. State what, if anything, you told Mr. Pritchard with reference to final receipts in buying land?

A. My strict instructions to Mr. Pritchard was this: to purchase no title except upon the presentation to him, and too, I think at first, to me of the Receiver's receipt and the warranty deed for the same, and I told him before he paid any money at first to show me the receipts, and he showed me the receipts and gave me the receipts with the deeds after that, so that he understood it thoroughly, and complied with it strictly. Mr. Pritchard is a man that I thoroughly, strictly relied upon, and had the utmost confidence in him. In fact, if I have now any money I felt it was much safer in Mr. Pritchard's hands than my own, and I devoted from that time on whatever money I happened to have of my own to the purchase of that property and by me turned over to Governor Stunenberg by deeds—sometimes quite a number.

Q. What, if anything, did you know about John I. Wells having advanced money for the purpose of making final proof to these various entrymen and entrywomen in the Basin?

A. As I said before, from the anxiety of Wells about the entry of his friend Bert Nugent, and the old gentleman, Arthur Anderson, and at the time

(Deposition of John Kinkaid.)

that they made final proof although they told me that they had their money, I became suspicious that Wells would likely advance them the money if he had it, but he told me he had enough to prove up on his own claim, and his wife had her money, but he wasn't going to rob her to help out the Andersons or Nugent, or any of them, that he wouldn't do that. He said he had promised to see them out—to see them out of town, that their bills were paid after they had proved up, and, I think, to this day, that the reason he brought that money to me to give them after they had proved up, in the evening of the day that they proved up, on which they did go home, to pay their bills, was to show me that he was lending to them afterwards. I had no knowledge of his advancing. I never knew until I heard Mr. Wells testify here that he had advanced one dollar to Bert Nugent—that he had advanced anything to Bert Nugent.

Q. My question was with reference to the other Basin entries, generally speaking?

A. I understood in—there was a hearing there upon these same entries at Boise, either in—the records will show when that was, but it must have been in 1903—and there I understood that Wells testified that he had advanced part of the money to Arthur Anderson—that was the first I heard of that, and the only thing I ever heard of it, and I didn't pay much attention to that even then. It didn't worry me at the time, I remember, because it wasn't my business, and I didn't care anything about it, and

(Deposition of John Kinkaid.)

I didn't take it seriously that Wells had any considerable amount of money. I didn't think there was any danger of his lending anybody any great amount of money. I knew he was working in the mines.

Q. What, if anything, do you know at the time you bought these claims of Mr. Sweet having advanced money to the entrymen?

A. I never knew that until long afterwards and that first came out through some of these people.

Q. Mr. Kincaid, you have gone through the beginning of the history of this Basin land. I want to ask you if what were spoken of and what is known as the Basin land were all taken deeds to and were all taken in the name of Palmer?

A. Every deed that I ever took upon the Basin land was direct to Mr. Palmer.

Q. There are certain lands involved in this litigation to which the deed from the entryman was taken in the name of Horace S. Rand. What tract of land were the Rand lands?

A. The Rand lands were the lands out on the Crooked River.

Q. Then certain other lands involved in this litigation, the deeds were taken in the name of George S. Long. What tract of land was embraced in those deeds?

A. That was known as the 6-4.

Q. Which in chronological order was bought next after the Basin lands?

A. The Crooked River must have been.

Q. State your first connection with the Crooked River lands.

(Deposition of John Kinkaid.)

A. I want to state that these deals in time overlapped one another—that is, the time of taking those titles they overlapped one another more or less, as your deed will show.

Well, all I remember about it is I knew there were a great number of people going from Boise, and most excellent people, too—well to do citizens, who resided there in Boise,—I knew that they were going to Crooked River, and making filings on timber lands out there at Kempfer's ranch, and I think that Kempfer and his sister in law and his wife filed upon lands near their ranch themselves—in fact, I know they did. I know that I bought their land afterward.

Q. State what, if anything, you had to do in inducing or procuring or requesting people to file on lands in the Crooked River tract?

A. Nothing whatever. It was no concern of mine, or interest of mine in the least bit. It had nothing whatever to do with the Boise Basin, because it was within a different water-shed, wasn't near Boise Basin at all, had nothing to do with Palmer, Stunenberg, or any of those parties whatever so far as I ever heard of it, until about February, 1903, when the first titles were procured, and in the name of Rand.

Q. Now, before that, state what, if any, arrangement you had made with Governor Stunenberg with reference to the Crooked River titles.

A. I had no arrangement with anybody. I didn't want to go into the business at all, or have anything to do with the tract. I had lost money upon the

(Deposition of John Kinkaid.)

Basin tract, because Governor Stunenberg had never paid me the balance that he owed me upon the Basin, and told me that he hadn't gotten settled with Palmer or with Palmer's backers, meaning Barber and Moon, and I didn't care to go into anything more of the kind which would cost me—instead of making anything out of the Boise Basin, I was in several thousand dollars before I got through, and I put that money in hoping to get the balance that was coming to me.

Q. State as to whether or not that was ever paid you.

A. No. That was never paid me. Governor Stunenberg was assassinated before that was paid me, and he told me that he hadn't gotten settled for it, and he was very kind about it, and he said, "Why, John, if you get that money all at once it will do you some good, and if you get it by piecemeal, it won't amount to anything after all, and when I see Mr. Barber and have made good my contract with him, then I will get paid up what the balance that they owe me, and I will pay you," and that was in that condition up to the moment of Governor Stunenberg was assassinated and while it doesn't seem like a business proposition and wasn't a business proposition to leave it that way, that's the way that I have always dealt with men I believed in, and I believed in Governor Stunenberg as thoroughly as anybody I ever knew, and I am confident that if he had lived that that amount would have been paid to the last farthing.

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(Deposition of John Kinkaid.)

Q. Did you afterwards have to file a claim against his estate for that amount?

A. I didn't file a claim against his estate for that amount.

Q. Did you settle with the estate?

A. I settled with the estate, with his brother, A. K. Stunenberg, and as that settlement involves every transaction that I had with Governor Stunenberg, except a matter on the 6-4, and perhaps you had better leave that until you come to it and put it altogether as one proposition.

Q. State your connection with the Crooked River tract so-called, in your own way, Mr. Kinkaid?

A. Of course, it has been a long time since then, and matters that were trivial then have been magnified to be of importance since, and I may not remember the things so well. I remember this; that about the first of the year of 1903, some of those people were trying to sell timber lands up in the Crooked River tract, and there had been a lot of agitation out in Oregon and elsewhere about timber lands, that it was illegal to have timber lands or do anything with timber lands, and people had no sooner gotten their lands until some of them wanted to sell, and I understood that those people were wanting to sell, and some of them came to me. I likely have prepared the filing papers for quite a number of those people. I don't remember how many, or anything of that kind, but, as the thing had gone along, some of them had come to me. I used to charge them \$2.50 for preparing their filing papers; some of them paid

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(Deposition of John Kinkaid.)

me \$2.50, and some paid me \$5.00. They were always more liberal when they were filing than they were when they were selling out, as far as I could see, and some of them told me that they would like to find a purchaser, and I presume some one knew that I had purchased some of the timber up in Boise Basin, quite likely they did, and had at least heard it because it was known at that time that I had, and I told them that I couldn't do it. Didn't know of any person that I could sell to, and long about the first part of February, Governor Stunenberg came to me and wanted to know what there was in that tract. I told him I didn't know. I wasn't there, never had been there, and he said that they hadn't got enough lands in Boise Basin, and while it wasn't in his contract in any way to furnish any lands outside, because he hadn't furnished enough in the Basin for a big operation at Boise to put in a great mill there, that he would like to take something to his people, meaning the Barber people, that would help out their deal, and I told him that I didn't know anything about the timber land there. I had been up past Kempfer's, but I never had been into that timber, and it was then winter and that country was then impassable, unless upon snow shoes, and I don't know but what he sent somebody in there. If he did, it was a man by the name of Taylor, I think. I remember that either then or some time afterward Taylor was up in there and then a messenger was sent in there to get him out of there because his brother was dying. I think that was Taylor. And the

(Deposition of John Kinkaid.)

question arose as to what those people wanted for their lands, and they wanted \$1,000—\$1,500.00, various amounts, and those locations out there ran very largely in families, as I remember the first ones I purchased. Now, there was a family by the name of Omby. They were people who owned the Boise Basin Toll road, I afterwards learned, seven or eight of them, male and female, and then there was a family—an old family of Boise of Bayhouse—old time residents, been there since the beginning of the town, and there must have been a half dozen to ten of the Bayhouses, brothers and sisters, etc., and their wives. And then the Eaglesons. The Eaglesons were quite well to do people, the same as the Bayhouses and the Ombys, and must have been over—there was more than a dozen of the Eaglesons, may not have been under the name of the Eaglesons, but they were ladies who were born Eaglesons and married others, etc. I think there was at least a dozen of them; Governor Stunenberg wanted me to see what I could purchase that property for, and I told him I would have nothing to do with it, and he said he didn't want me to on the same basis; it was an entirely different transaction, hadn't anything to do with the other men—maybe the same parties would get it and maybe they wouldn't. The fact is, I felt the Barber Lumber Company, or whoever it was that the Palmer titles were taken for, had treated Governor Stunenberg quite shabbily, or at least that I had suffered because they had done so in not paying the balance that was due me on the titles

(Deposition of John Kinkaid.)

that I had purchased for them. And I tried to find for those people who asked me to find a purchaser for the property, I tried to find some other purchaser, and I tried to sell to the Fayette people, but they didn't want anything to do with it. The Fayette Lumber Company tried to sell the claims, and the locators on Crooked River had asked me to secure a purchaser for their land, and there was a gentleman came there from Michigan by the name of Baker, and he was a friend of Mr. Dockery's, and Dockery came and tried to arrange to take options upon some of the property, but these people wanted to sell and wanted the case, and they wouldn't sell unless they could sell for cash, and prices were pretty high, and I endeavored to find somebody that they could sell to, and thinking that I might make something by negotiating and making a sale of their property. My sympathies were entirely with the owners of the property. I wanted to see them get the most out of the property that I possibly could. I felt the property was worth a good deal more than the Barber Lumber Company and Mr. Palmer had been paying for it there, but the up-shot of the whole thing was that there wasn't any other purchaser that had money to pay there, except Governor Stunenberg who had the money with which the titles—or could get the money with which the titles were taken to Mr. Rand. Mr. De Arcy was endeavoring to buy the property, or a lot of those claims, and the parties thought they could sell to him, but he wanted to take options, and there were others who were endeavoring

(Deposition of John Kinkaid.)

to purchase, but they didn't want to purchase on time. And about the 11th day of—either the 10th or 11th day, or 9th, or some place along there—of February, Governor Stunenberg said that he would pay me \$800.00 down for all the titles that I would purchase out there on Crooked River, and that I could make as much out of that as I liked in getting the titles for less than that, and I told him I wouldn't try it at all, wouldn't have anything to do with it, that it wasn't enough, and I knew the parties wouldn't take it, and I wouldn't offer them any less than that amount, and I think that he had purchased before that—I say before that, just a few days before—that he had purchased himself from Aaron Omby, one of the Omby family, his entry, and paid him \$800.00 for it, and taken a deed to himself,—that is Governor Stunenberg, and I told him I thought he had better go and buy the rest of the property at that rate, as that was much cheaper than I could do. I think likely that he had tried to do that either directly or indirectly, through some one else, and he afterwards came to me about the 10th or 11th, and said I will give you \$950.00 for every title you get in the Crooked River tract, but you got to get me as many as 50 titles, is my recollection, before I will make you any payment out of which you can make any money. He said, I think, you can get a lot of those titles for \$800.00, and if you do, you can make \$150.00, in each case. He said, I will pay you as you give me the deeds, \$800 for each deed you give me, but I won't advance one cent. I told him I

(Deposition of John Kinkaid.)

didn't care about his advancing anything whatever, that I could get what money I needed to buy all the titles I wanted, and if he took them that he would have to pay for them. It was agreed, therefore, that he would pay me \$800.00 when he got the deed, and when they should have as many as 50 claims that he would pay me the balance of the \$950.00 for the claims. I immediately gave notice, and I presume it was about the 11th day of February, 1903, that I would buy timber land upon the Crooked River, and I offered \$800.00 to the parties to offer their tracts. The first parties that came was some of the Eaglesons, I think. It was either the first or second day that they came, and the Bayhouses, and I paid \$800.-00 for every one of those titles that I secured. I must have taken—whatever the records show—20 or 30 or more of those claims in two or three or four days, the first two or three days. I think it was the first two days, and I prepared all of the deeds. Those deeds will be found upon my own blank forms which I had published, warranty deeds, found in my handwriting. I prepared them in my office, directly opposite the Idaho Hotel, on Main Street, in Boise, and paid in almost every instance in checks upon my account in the First National Bank of Boise, and my account will show there a great number of \$800.00 checks, and those are all for timber claims bought at that time in that tract. The Eaglesons were acting almost as a family it seemed. I think that Harry Eagleson made me promise him that I would take all of a certain number of tracts, ten or twelve or what-

(Deposition of John Kinkaid.)

ever it was that they had, or that I wouldn't take none. They wouldn't give me a deed if they wouldn't sell all at one time, and I agreed to do that and to pay for them. Of course, as soon as I begun to buy I phoned to Governor Stunenberg that I was buying and to make my account good for a certain number of deeds, and I sent those deeds to him by messenger, I think, and my account was made good from time to time as I sent the deeds to him. After the first two or three days, Governor Stunenberg wasn't in town, and, I think, Senator Borah was intrusted with the direction of the funds that Stunenberg had for that purpose. When I phoned Mr. Borah that I had given the deeds, he deposited \$800.00 for each individual quarter section that I told him that I had purchased, and I carried the deed to him or sent it to him. In like manner, that lasted for some time. I bought the bulk of those claims in February and March. I suppose, 1903, and closed that entire transaction up to about 94 claims, I think 93 claims.

Q. Well then, did Governor Stunenberg afterwards pay you the \$150.00 from time to time held back?

A. The first that he paid me was some time, I think, in April or May, 1903. He had then—I am not positive—it was 50 claims; or had the 50 claims to be able to say to his people that he was getting considerable there and would have enough to make a timber operation on the Crooked River, and he said he would pay me the commission then, and he

(Deposition of John Kinkaid.)

paid me \$4,000.00 the first amount he paid me, and you will find a lot of checks with the stubs or the checks themselves may have been marked "Com.," which meant commission. It wasn't necessarily commission, or anything of that kind, but that is the way he had of designating that fund out of which he drew. He held the other funds which he called the "Timber fund" that account seemed to be in the Stunenberg Bank at Caldwell, and the plain account was what were Crooked River—something of that kind—but the other was called "Commission Account" that was where he held the money back he collected. He told me he had collected, and I told him I wouldn't go into the field unless he would collect every time from the Barber people, or whoever he was purchasing for. I told him I wouldn't take their word for it that they would pay him afterward, but that he had to have it in his possession. I think it was carried in the bank as really one account, but had that different designation on his check. The account will show that. I was paid for some 93 titles on Crooked River, first the sum of \$800.00 for each, and afterwards in checks that were marked "Commission" "Com." I was paid the \$150.00 for each claim. In purchasing the claims I don't think I ever gave any checks out for more than \$800.00. Some of the claims cost me more than that, but I think that I made out the checks for \$800.00 and gave them cash in addition to that.

Q. What was the object of that?

A. Well, I don't know that there was any object

(Deposition of John Kinkaid.)

in it, except that I wanted them all to believe that I was paying the same, and I didn't want any evidence out. I have an idea that was it. I don't remember that. There were some of those parties that I paid a little more than that, and there was some of those parties too at first after I had given them their checks came and gave me \$25.00 for making the sale. They felt that I had done them a favor and that I had acted for them. Now, I can't remember what parties that was. That did occur in a few instances in which they gave me \$25.00 for making this sale. Of course, where I bought from a man's wife, I frequently gave one check for \$1600.00, I think for the two claims. One of those claims I bought I turned in a deed, I never got it listed, but I guess that makes no difference in this transaction. That was Mrs. Schmelzel. I never had that on my books and somehow or other it was never figured in and I guess I lost my \$800.00 in that case quite likely, and I never got my \$150.00 from that—never got anything from that, but that would make 94.

Q. Did you have anything to do with procuring or inducing people you bought of to locate in the Crooked River country?

A. Oh, no. I had nothing whatever to do with that. The fact of it was at that time a great many people were trying to find timber land, and I know there were ladies and gentlemen came to me long after that, while that tract was being located, and asked me if I knew where there was anything that I could get, and I might have referred some of those

(Deposition of John Kinkaid.)

parties to the Crooked River tract. When Downs was locating people up there, because I had heard about it and knew about it, some of the people came to me to prepare their filing papers, but that was all I ever had to do with their location, or interested in it.

Q. Did you have any interest, any financial interest in it at all other than you have stated?

A. None whatever, and I want to say for Mr. Pritchard that he had nothing whatever to do in the purchase of those titles on Crooked River, and nothing to do with it, unless he took a lot of those acknowledgments, and I know that when I was taking a lot of those titles, the first few days, I sent across the street to his office, or phoned across to him, and had him come over several different times, and had him take the acknowledgments. I could have gotten the acknowledgments taken down stairs in the same building by Mayor John Haynes, who was a Notary Public, but I learned then or afterwards, that Haynes would never charge anything for taking acknowledgments, and I thought it was an imposition upon him to send people there, although I did it at different times when I couldn't find any other notary near, so the people likely went across the street at my direction to Mr. Pritchard's office and acknowledged the deeds there. Some of them went out and had them acknowledged different places, and when they brought back the deed I gave them the check for the amount.

Q. Were you interested in any manner, finan-

(Deposition of John Kinkaid.)

cially or otherwise, in the location business of Wells and Downs in the Crooked River country?

A. None whatever, and I didn't know that Wells, until I heard Wells testify here, had anything to do with the Crooked River locations, and he was supposed to be in the real estate business there in Boise, and so far as I knew he wasn't taking people up there. I didn't never see him on the road going up there. I used to be up on the road back and forward part of the way. I never saw Wells up there. Evidently Downs was the active man. I had no interest with either of them, and I didn't pay much attention to what either of them was doing, and I don't know that Wells was really a timber cruiser. He might have known how to find corners and shown them to people. I don't think he was active in doing that. I don't know if he had anything to do with the locations or filings in the Crooked River tract.

Q. Now, did the purchase of the 93 or 94 titles you have told us about, conclude your connection with the Crooked River country, the Crooked River lands?

A. It did, and it was a cleaned-up transaction. I had my accounts of every transaction in connection with it until they were destroyed at Rawhide, Nevada, in the general fire there September 4th, 1908.

Q. Now, Mr. Kinkaid, the next transaction involved in this litigation was the purchase of what is known as the 6-4 lands. Now, will you state your

(Deposition of John Kinkaid.)

first connection and your entire connection in the 6-4 lands in your own way, and the same as you have before.

A. The 6-4, I don't know when that was located, in 1903. Now all I know about that transaction was that it was thrown open some time in the summer, and it was advertised as thrown open in the paper, and then it was afterwards stated that the State had a preference right for selection of the school lands, or of State lands anyway, upon this 6-4, for sixty days after it was thrown open for settlement, and I understood that the State had cruisers in there, that was a matter of general information in the papers, and that the State would likely get all of that and would likely take all of it. The administration at that time was a Republican administration, and I didn't belong to that political party, and I wasn't very well acquainted with the State-house party, the officials of State at that time. I knew Governor Morrelson and I knew perhaps the Auditor, the Attorney, and so on, and Eli Moore, and I wasn't interested in the matter in any way, except in a general sympathy or desire on my part that as many of the Boise Basin people, people who lived in Boise County, should get land up there as possible, and as I had represented those people up there in Boise County in the Legislature, and they had been very kind to me and very generous in every way. I always felt even while I was staying most of the time in Boise that that was my home up there, those people came nearer being my people than any

(Deposition of John Kinkaid.)

people in Idaho, and—quite a number of people had come to me from the Boise Basin, and asked me if there wasn't some timber left in the Boise Basin that they could get, and I told them about the 6-4, and told them when it would be opened, and I took some interest in it on that account, and I told them to watch that and when there was a chance to locate there to get in and locate when it was thrown open, and they should have that land if anybody should and to do it. Now, just before—I should say about a week before—the time that the State actually made its selections, or the State actually—that the others could make their filings after the State had made its selections—about a week before that line-up, Mr. Downs, Pat Downs, came to me and said, “I want you to look into this matter of what filings are being made by the State in 6-4,” what selections, and I asked him if the selections had not all been made, and he said no, they hadn't been filed yet in the Land Office, and he said, “I want you to do that for me and do it quickly,” and I told him that I wasn't practicing before the Land Office at that time and didn't care to have anything to do with it, and he said, “You do it and do it for me,” and I think he left a twenty dollar gold piece on the table, and “You find out what they selected.” I went to him then afterward and talked with him about it. He gave me a plat and he gave me an estimate of what he thought as nearly as he could tell, what the State had selected, or would select. He had seen the cruisers of the State, he told me, of the State up

(Deposition of John Kinkaid.)

there, and he had gotten some information from them, or had inferred something from their actions and from the ground they had seen them on, and from the markings on the trees, etc., and he gave me a plat, plank plat, of the township, and marked on it what he thought they were going to take. He was an expert cruiser, and seemed to understand that business very thoroughly. And I went to the Land Office to find out what filings, selections the State had made, and the officers there, the Register and Receiver, told me that the State hadn't taken any yet, and I had learned, and I think it was by some remark that Governor Stunenberg had dropped, that both Stunenberg and the Fayette Lumber Company were endeavoring to scrip that land, and they had some scrip to file on it so I understood, and I was quite positive that Stunenberg wanted to file some scrip on it, and I believed that the Fayette Lumber Company was preparing to do the same thing. I might have been mistaken about that, but I believed it was, and I was interested to the extent of hoping that some of those people in the Boise Basin, who really had stood by and seen nearly all of the timber in the Boise Basin taken away from them by residents of Boise in the immediate locality, I was anxious that they might get some of that ground, and I didn't want Stunenberg or anybody else to scrip it, because scripping always meant to me by a big corporation they would take everything there was in sight. I understand that Downes testified that I got him that information, and that I know

(Deposition of John Kinkaid.)

at the Borah trial it seemed to be a very mysterious thing how that thing occurred. My recollection is I went to the Land Office first to talk to the officers there about it. I went over to the State house and called upon the Governor, and I don't remember whether I saw him at that time, or not. I likely saw his Secretary, and asked him about the States' selections, and of course the right place to go was into the State Land Office, I had first gone to the United States Land Office, of course, and I went into the State Land Office, and saw the officers and clerks there. Now, I don't know who the—I think the active head of the State Land Board was Mr. Norman Jackson, at that time, because I knew that he was in that position from newspapers, but I don't remember that I ever knew Mr. Norman Jackson, and I don't know that I met him there at that time, or who it was that I met. I asked about the selections there and the clerks or the officer in charge there, or some one, showed me some of the titles and plat books, and I noted upon the plat which I had with me what I learned about it, but it is my recollection that it wasn't a definitely settled proposition, that it wasn't certain whether they would take these particular lands or not, but whatever I got there I gave the results to Mr. Downes. I don't know who I got that from. There was nothing mysterious about it. There was nothing adroit or shrewd in any way, and I don't know what officer it was. It wasn't a matter I attached a great deal of importance to at the time, although I was interested for

(Deposition of John Kinkaid.)

those people up in Boise Basin, hoping that they would get some of those locations even rather than the State.

Q. After you had furnished this information to Mr. Downes, state what, if any, arrangements you made with him or what he said he was going to do with reference to locating.

A. Downes said—I told him I didn't know whether that was definite, whether that was right or not. He said he would go upon that, and he said, "Now here, you will have to file these people for me, or it won't be done right,—that is you will have to make out their filing papers, and I know that you can do it out right and do it quickly, and I will send a lot of them to sign so then they won't conflict with each other, so they can make their filings," and I didn't see anything more of him for a week or more, and about, I think it was Saturday—quite a number of those people came into my office with notes from Downes showing that they had been located upon such and such quarter sections in 6-4, and that the timber amounted to about so much per acre, and they asked me to prepare their filing papers. It was a rule of the Land Office that each applicant had to go to the Land Office and get the blanks himself, which he used, and the first time I ever saw those people in that connection, as I remember it, was when they came into my office with their blanks and with this note, and I made out the papers. I made out there—whatever the record shows—something like 20 sets of papers, I think. Might have

(Deposition of John Kinkaid.)

been a little bit more or a little bit less. I made them out on the typewriter, because they were duplicate instruments in the case, and as I checked them over to see that they were correct, as Downes had told me to be very careful about that, told me he would pay me well for it whether they paid me for it or not, I lined the blanks, and since then I have learned that that was a great offense at the Borah trial, but I could identify from the lines and from the typewriting any of those papers that I made out at that time, and I made out something like 20, more or less, and gave them to the parties, and they were supposed to file Monday morning.

I had previously seen the Register and Receiver of the United States Land Office, or the Register at least, respecting the attitude of the office upon the question of giving preference to scrip or individual filings should they present themselves in line, and what I asked Mr. Harry Simms, who was then Register of the Land Office, was whether if a man got in line in that application or in the location of 6-4, or any other township, and presented scrip for filing, whether he would be allowed to file but one piece of scrip or upon one piece of land 160 acres say, and then have to give way to the next man to him, or whether if he had gotten wind of it first, he would stand there and hold the window until he had filed all of his scrip, and Mr. Simms' idea was that he wouldn't hold his place, not only that he wouldn't be allowed to file his scrip, but that he oughtn't to be allowed to file until the individual filers had gotten

(Deposition of John Kinkaid.)

the opportunity. He said he didn't know what they would rule about that, but said that was the way it struck him, and that was his idea, and it struck me as very sensible, but I didn't think it was quite legal, and I told some of the parties who had asked me about lining up there, I told them to get there early in the morning, and it seemed, however, that Sunday evening after dark or about dark, it was discovered that one George Chapman was standing over there an elderly gentleman, an old citizen of Boise, a very nice fellow, and he was standing at the window, which was closed, or at the door, which was closed at the Land Office and they thought he was likely to file scrip and the Fayette Lumber Company had its office in the same building, and the idea was that they were going to file scrip, and I looked forward to some of the Barber people to file the scrip. And when they asked me about it, the same men whose papers I had prepared, quite naturally came to me, I suppose and most of those were Boise men and not Basin men, men I didn't know many of them at the time, when they asked me about it I told them I thought they had better get in line and be as early as anybody, and see that nobody got ahead of them if they could help it. They got in line there and there were a lot of locators there that were from elsewhere. There was a place called Dry Buck where a small timber tract was being taken up—that's on that same day, as I recollect it. That is over, I think, on the other side of the Fayette River. That swelled the number

(Deposition of John Kinkaid.)

that was in line there, and Mr. Peter Sonle, who owned the building, was appealed to by the representative as I understood it, Mr. Frank Somebody, representative of the Fayette Lumber Company, to put these men out of the building, and I think some of those people likely sent for me, and I went over there—somebody sent for me. The Mayor was there, that was Mr. Jos. H. Hawley, the Attorney, who was Mayor at that time, and he was appealed to to put those men out of there as a mob, because he was a Mayor. They appealed to the police force first, of course, and Sonle I believe ordered the men out of there, and they still held their positions. There was no disturbance or anything of that kind. They said they had come to the Land Office to file on lands and they had a right to be there and would be there and stayed until Monday morning until that door opened, and I think it was Mr. Hawley said that as long as they were peaceably, quietly sitting there, they had a perfect right to be there. They had gotten chairs some place and were sitting along very comfortably, quietly.

Q. Now, at that time, or up to that time, Mr. Kinkaid, had you entered into any kind of an arrangement of any kind or character with anybody for the purchase of the lands which might be entered by these locators in line?

A. None whatever.

Q. Did you have any connection with it other than that of being employed by Mr. Downes in making out the paper *as states*?

(Deposition of John Kinkaid.)

A. No. Downes paid me. Many of those parties paid me for preparing their papers. I took what they offered, because I didn't have much time to talk about it, prepared those papers all likely in one afternoon. I think all one day or about that time. They might have been back there earlier in the week, but they didn't get around there until late in the week to have the papers prepared. I prepared the papers as presented to me and Downes paid me \$50.00 afterwards for preparing those papers. I had that interest in it, of course. I had this interest in it. I wanted to see all those that were in the Basin there—there were some Basin men that made filings there, but I don't think they were in that line-up now. There was Joe Penrod, and man they called Riley Reeves, man who used to be treasurer of the county; Penrod used to be Clerk, and there was either Mr. Fisher or Mrs. Fisher—Mr. Fisher was then County Attorney, or had been County Attorney, of Boise County, and the Basin is in Boise County, and they were the only ones that really lived up in Boise Basin, they and two or three others, I remember, were the only ones that lived in the Basin who made a filing, and whether they filed in that line-up I don't know whether they did then or the next day afterwards, and as to whether Downes made their filings for them, that is showed them the land, located them, or that, I don't know. I haven't the least idea. I don't think I made—

Q. Did you afterwards purchase the lands which were located in 6-4 from some of them?

(Deposition of John Kinkaid.)

A. Yes. I either purchased those lands or sold those lands, as you may call it, and I don't know which it is.

Q. Just state the arrangements you made.

A. You can call it which you please. I either purchased them or sold them, and it was my hope that those lands wouldn't go to the Barber Lumber Company, or any of those parties, and it was my belief from the spirit of rivalry that those men showed in lining up there and fighting for their land, staying there all night, that they would be locators that would hold their land, that they would keep their land there until the land would be worth something to them, that they would make some money out of it, and I had very great hopes of—that they would do so, not that it was any of my business, but I wanted to see them do it, and after they had proved up and paid for their land. Some of them talked to me about the thing, and I advised them now—you take parties who came to me and talked to me about that thing to hold their land there and hold it until it was worth a great deal more than the Barber Lumber Company, or anybody else had ever paid for it up there, and the most of them I talked to believed that they would do it, but they said, what's the use after a time, if I hold my piece of land other people will sell theirs. I will be surrounded and they won't have to buy mine until they get good and ready and I can't hold out for years, and I heard soon after and it was a surprise to me too, soon after they had proved up that there was some

(Deposition of John Kinkaid.)

of those people that wanted to sell—some of them came to me and asked if I could find a purchaser and I told them I didn't think I could and didn't believe that it was time to sell anyhow, and I am free to say that it wasn't at all philanthropical on my part that they should get more out of it, that I supposed if they would hold that land until they would get more out of it, if I ever assisted them afterwards I would get more out of it for assisting them if they should come to me. I thought I could make more later than I did then. I didn't want to sell any more lands to the Barber Lumber Company; didn't want to have anything to do with it, because all the amount I should have made on the Boise Basin tract I had never realized that, or gotten it paid. All that I had gotten, or practically all that I had gotten out of the Crooked River tract in the way of commissions or otherwise, had gone back into timber, or gone back into Stunenberg's hands, practically all, and I didn't want to have anything more to do with Stunenberg, or his deals. That was the way I felt at the time and I knew, however, that they would want that land. They had been defeated from filing the scrip on it and I didn't believe they would pay any great amount for it, but subsequent to that time Mr. Borah came to me and said that they had had money sent to him from Eau Claire with which to buy timber lands in the Boise Basin, and that he understood that there was lands up in 6-4 that were subject to sale, and that the parties wanted to sell, and I asked him what he would

(Deposition of John Kinkaid.)

pay and he said he would pay—didn't make any difference to him, that he would pay whatever the land cost, if it didn't go too high, and that he would pay me for my services. Stunenberg also came to me, but I don't know whether it was Stunenberg came to me first or Mr. Borah. It was one or the other. I had had no transactions with Mr. Borah before, except that he had deposited some money for me upon the Crooked River tract when I was purchasing that. And I likely consented more readily to do it for Mr. Borah than I did for Governor Stunenberg for that reason, and he seemed to be very liberal about what he would pay, and he told me he would pay \$50.00 a piece for getting certain titles if I would keep them down to \$800 or something like that, and those he had mentioned to me that they wanted to sell, some of them *I was them* and I purchased— Oh, I purchased something over 20, and I think it was 27 of those claims in 6-4, and took the deeds to George S. Long, at the direction of Governor Stunenberg or Mr. Borah, whichever it was that first spoke to me about it. I bought those at about \$800.00 apiece. Paid my own money for them in each instance and took the deed to Mr. Borah, or to Mr. Stunenberg, or the deeds, sometimes I took several, and the money was paid me, \$50.00 a claim that Mr. Borah paid, and I think Governor Stunenberg paid the same. Whatever was paid was paid out right at that time upon each deed that was delivered, and the full amount that I had paid—I told them I had paid was repaid to me.

(Deposition of John Kinkaid.)

There was one case—that was of Riley Reeves I paid him \$1,000 for his claim, but I got the \$1,000 of Mr. Borah first for that. I remember that, but all the others I bought with my own money, and presented them and got the money afterwards.

Q. Did you buy any of these claims from any of these entrymen from 6-4 before final proof had been made and final receipt? A. No, sir.

Q. Did you negotiate with any of them in regard to it?

A. No. I never did that with any one, and there was no one of those men that would have made such a proposition to me.

Q. Was the same true with the Crooked River tract?

A. The same was absolutely true of the Crooked River and every other claim in the Basin or elsewhere, or *time* or stone entry that I ever knew of.

Q. Did you ever in any of the three transactions you have detailed purchase anything, any claim, from any entryman or entrywoman prior to the issuance of the final receipt and certificate by the United States Land Office?

A. No, sir. Nothing of that kind was ever mentioned or discussed between me with any one that I believe ever filed upon the claims in Boise Basin or in Fayette, or elsewhere, in that country. There were such propositions made sometimes by irresponsible people, or people who convinced me that they were very irresponsible that came and asked me if they could not get money for the purpose of filing

(Deposition of John Kinkaid.)

upon timber lands, and I told them that I understood that that had been charged to be the case out in Oregon, and I didn't know of anything of the kind in Idaho, or elsewhere, and they had better dismiss the matter from their minds.

Adjourned until 2 P. M., the 6th day of April, 1909.

At 2 o'clock P. M., met pursuant to adjournment.

[Deposition of John I. Wells, Recalled on Behalf of Defendants.]

Counsel for parties being present, whereupon Mr. JOHN I. WELLS, being recalled for further cross-examination, testified as follows:

Cross-examination.

(By Mr. GORDON.)

Q. Mr. Wells, I show you a timber and stone sworn statement of John I. Wells, dated September 20th, 1901, and ask you if you signed that paper filed in the Land Office at Boise, on or about that date?

A. Yes, sir; I did.

Q. I show you the testimony of John I. Wells given on final proof December 12, 1901, and ask you if you filed that in the Land Office?

A. Oh, yes.

Q. And the cross-examination attached is not signed. I show you a deed dated October 8, 1906, made by John I. Wells and Jennie E. Wells, his wife, to the Barber Lumber Company, consideration \$800.00, and I will ask you if you signed that deed and whether that is your wife's signature, and

(Deposition of John I. Wells.)

whether you both acknowledged the same before John J. Blake? A. Yes, sir.

Q. That deed has never been recorded?

A. I don't know.

Q. When did you give that to the Barber Lumber Company?

A. Well, I could not give the exact date; I think it was about four years ago, I guess.

Q. Who prepared that deed for you, Mr. Wells?

A. I think Josh Blake.

Mr. GORDON.—We offer in evidence the timber and stone sworn statement of John I. Wells, dated September 20, 1901, the testimony of John I. Wells given on final proof, dated December 12, 1901, and cross-examination attached, receiver's receipt and the register's certificate, dated June 22, 1904, the other final proof papers and the deed dated October 8, 1906, made by John I. Wells and Jennie E. Wells, his wife, to Barber Lumber Company, consideration eight hundred dollars, all of which papers have been identified by the said John I. Wells as having been signed by himself, and the deed also having been signed by himself and Jennie E. Wells, his wife; all of said papers having reference to the northwest quarter of Section 14, Township 7 N. of Range 5 E., Boise Meridian, which papers are marked "Complainant's Exhibit John I. Wells No. 2."

Mr. BUNDY.—I object to the introduction of the entry papers by John I. Wells for the reason that his claim was not involved in this action and not initial to it.

(Deposition of John I. Wells.)

Q. Mr. Wells, do you know Harvey H. Wells?

A. Yes, sir.

Q. Is he a brother of yours? A. Yes, sir.

Q. Mr. Wells, do you know the signature of Harvey H. Wells? A. Yes, sir; I think I do.

Q. You have seen him write, haven't you?

A. Yes, sir.

Q. I will show you an affidavit dated December 10, 1901, signed by Harvey H. Wells, and I will ask you whether that was signed by Harvey H. Wells?

A. I think so; yes, sir.

Q. I show you the testimony of Harvey H. Wells given on final proof, dated December 10, 1901, and ask you if that is the signature of Harvey H. Wells?

A. Yes, sir.

Mr. GORDON.—We offer in evidence the affidavit of Harvey H. Wells, identified by the witness as having been signed by said Harvey H. Wells, and I desire to read the same now in the record.

Mr. BUNDY.—Objected to as incompetent, irrelevant and immaterial, and for the further reason that no land entered by Harvey H. Wells is involved in this action, and the defendants are not charged with having acquired any land through Harvey H. Wells.

(Mr. GORDON reading:) “Department of the Interior, United States Land Office, Boise, Idaho, December 10th, 1901. Harvey H. Wells, being first duly sworn, deposes and says, that he is the identical Harvey H. Wells who made a timber and stone sworn statement No. 224, at this office, on September 24th,

(Deposition of John I. Wells.)

1901, for the Southwest quarter of Section fourteen, township seven North of Range Five East, on which final proof was desired and made December 5th, 1901; that he was unable to appear and offer proof on that date, or any any subsequent days, until this 10th day of December, 1901, for the reason that the money with which he expected to pay for this land, was not at hand, and could not be got in before to-day. (Signed) Harvey H. Wells." "Subscribed and sworn to before me this 10th day of December, 1901, Edward E. Garrett, Receiver."

Said paper is marked "Complainant's Exhibit Harvey H. Wells, No. 1."

I also offer in evidence the testimony of Harvey H. Wells given on final proof, and cross-examination thereon, which has been identified by John I. Wells, marked "Complainant's Exhibit Harvey H. Wells, No. 2."

Mr. BUNDY.—Same objection as above, and for the further reason that it is not proper cross-examination.

Q. (Mr. GORDON—Continuing.) I show you a non-mineral affidavit of Harvey H. Wells, dated December 22d, 1901, and ask you if that is the signature of Harvey H. Wells? A. Yes, sir.

Mr. GORDON.—We offer this paper in evidence marked "Complainant's Exhibit, Harvey H. Wells, No. 3"

Mr. BUNDY.—Same objection as above.

Q. (By Mr. GORDON.) Mr. Wells, do you know Edward Abel Hunter? A. Yes, sir.

(Deposition of John I. Wells.)

Q. Did you ever see Mr. Hunter write?

A. Not very much; I don't know whether I could identify his signature or not.

Q. Will you look at this sworn statement, dated September 25th, 1901, and will ask you whether or not that is the signature of Edward Abel Hunter?

A. I could not say.

Mr. GORDON.—That is all.

Redirect Examination.

(By Mr. BUNDY.)

Q. Mr. Wells, you gave that deed to the Barber Company about four years ago? A. Yes, sir.

Q. The evidence shows a check of the Barber Lumber Company, to John I. Wells, October 8th, 1906, the date of the deed shown you, for \$1,250 in payment of the same land as mentioned in the deed; I will ask you as to whether or not that refreshes your recollection as to the deed.

A. It must have been, because that is the only \$1,250 I remember getting of the Barber Lumber Company.

Q. Did you execute the deed on the same date as the check bears? A. Yes, sir.

Recross-examination.

(By Mr. GORDON.)

Q. I notice that the deed was for the consideration of \$800; what was the purpose of putting \$800 in the deed when you were getting \$1,250 for the land?

A. I don't know, you will have to ask Mr. Chap-

(Deposition of John I. Wells.)

man; it was at his request that Blake drew up the deed, and I signed it.

Mr. GORDON.—That is all.

[Deposition of John Kinkaid, Recalled on Direct Examination.]

The witness, JOHN KINKAID, recalled on direct examination, testified as follows:

Direct Examination.

(By Mr. BUNDY.)

Q. There has been some evidence, Mr. Kinkaid, with reference to second deeds taken from some of the entrymen and entrywomen, the early ones; do you know anything about that?

A. Yes, I think I know all that there is about that, except the actual taking of those deeds from the parties, and it occurred in this way, and it occurred with respect to the Boise Basin group of claims only, and the first titles that were purchased up there. That is, it was due to the first 40 to 60, or maybe 70 titles that were purchased up there; there were more new deeds gotten from the parties; it arose in this way, and to be given in their chronological order, I would say that there was someone who told Mr. Pritchard, at least he told me so, that one of the entrymen told him that he would like to get his deed back and give a new deed, a subsequent deed, and Mr. Pritchard referred him to me. I don't know who the man was, I can't remember, but it was one of those who came to me, Mr. Pritchard had told him that I had his deed, and he came to me and he said;

(Deposition of John Kinkaid.)

“Have you got a deed of mine for land in the Basin?” and I told him “No.” I had taken a deed, but it had been delivered to the purchaser, and he said, “Well, I wish you would get that back; I sold immediately after I had paid for my land, or immediately after I got my receipt, the next day, or the same day,” or something of that kind, and he said, “I don’t think it looks very well, and I don’t want my wife (or somebody else) to know anything about that, that I did it.” I told him that he had a perfect right to do it if he wanted to, and needn’t worry about it, and he said, “Well, you get me that deed anyway, and it will save me a great deal of worry and sleep, because I don’t want people to know that I gave it that early after I had gotten my Receiver’s final certificate of entry.” I went to Governor Stunenberg and told him what this party had said, and I told him that I wanted that deed back, and said there was no necessity for it, and I told him that made no difference, and if he wanted to do it, a new deed would be as good as an old one, and to get it for me, and I had to speak with the Governor several times about it, and it went quite a while, and then he brought it to me one day after I had given up all hope of getting it, and I suppose that I prepared the new deed; anyway, a new deed was prepared when I got the old one, and I suppose I prepared it, and I took it up to Mr. Pritchard, and it was executed; Mr. Pritchard likely knew the man better than I did. I didn’t know many of those people, but very few of them, and he got a new deed and I returned it to

(Deposition of John Kinkaid.)

the Governor, and I think it was quite a time after that, but I can't give dates at all, but the Governor came to me and he says, "I have heard from my people who purchased this land, and they say that there is a lot of those deeds that are defective," and I asked him in what respect they were defective, and he said as to consideration mainly, and that in one instance the date of the acknowledgment had been left out and that in some instances the date of the acknowledgment was different from the date in the deed; that some of the deeds were made by married men and they had not been executed by their wives, or that they feared that was so, and that there might be some homestead interest in the property yet that had not been conveyed. I told him that there could not be anything in that, as I understood it, and not having my law library statutes, I went to Judge Wolf, who is now on the District Bench up there, State Bench, and I asked him about it, and he showed the Statutes, and it was my understanding that that was entirely unnecessary; that nothing effected the homestead in that State, unless a notice that that particular piece of ground was a homestead had been filed of record under the law, was necessary for the wife's signature and separate acknowledgment, and I told the Governor that I didn't see any necessity of getting those deeds, it would cause a lot of trouble, and he said that it didn't make a bit of difference that his people wanted them, and my construction of the law didn't go with their Wisconsin attorneys, that that was their idea, and he wanted

(Deposition of John Kinkaid.)

to comply with it, because, he said to me that likely they would hold him responsible for not fully complying with his contract any way, as to time in getting titles there, and the amount of timber that should have been in that contract in the Boise Basin, and he said he was not going to have any trouble with them at all, for me to get those deeds, and he brought me a number of them.

Q. (By Mr. GORDON.) How many do you think you had?

A. I think between 30 and 40 of those deeds that he brought me— and he told me that whatever it cost to get new deeds to pay for it, and he would repay me, and that it would come out of his pocket, and not to make it any more than I could help; but he would pay me, and he paid me \$200, but that was a long time afterwards. The Governor was a man that would certainly pay what he had obligated himself to pay, but it was a long time before he could get to it, unless he was dunned; he was dunned a great deal, but I didn't do that. I went to Mr. Pritchard and I said, "You have taken these deeds, and I want you to get the new deeds from these parties," and he wanted to know what excuse or reason he should give them; he says, "Those men have gotten their money and sold their land, and have nothing to do with this, and unless you pay them something they won't want to go to all this trouble, but there is nothing I can do for them, and that will be asking a favor from them to get them to do that," and I told him practically the same as Mr. Stunenberg had told me

(Deposition of John Kinkaid.)

that the people who owned the land wanted the deeds and that we had to have as many of those deeds as we possibly could get, and it didn't make any difference to me what it cost, that I would pay it to him, when I could get it, and he agreed to go ahead and get those deeds and I was to pay him for doing it, and I paid him; I know I paid him a couple of hundred dollars for that purpose, and he told me that it was much more trouble to get those deeds than it was to buy the land in the first place.

Q. (By Mr. GORDON.) The property that you got those deeds for, were in which of these sections that you have referred to?

A. They were only, absolutely only in the Boise Basin group.

Q. (By Mr. GORDON.) How long after the original deeds were made were the new ones given?

A. It might have been six months and it might have been a year, and it might have been more than a year.

Q. (By Mr. GORDON.) Can you think of the name of any one person you got a new deed from?

A. Well, now it would seem that I ought to, but those names were just names to me; a great majority of them I didn't know.

Q. (By Mr. GORDON.) Would you remember them if you would see the names?

A. Those names, I remembered that they were men who sold, but that is all that I could testify to.

Q. (Mr. BUNDY—Resuming.) Did you ever advise or direct any person to locate or take up tim-

(Deposition of John Kinkaid.)

ber lands in the Boise Basin, Crooked River or 6-4?

A. Yes, I did; people up in the Basin came to me when they came down to Boise, especially in the latter part of the year 1901-02, and 1903, and said that everything was being taken up there by people outside, and they were losing their rights up there, and I advised them to file upon timber lands and hold their lands there until they could get good prices for them.

Q. Did you at any time advise George Wheeler in Portland with reference to taking a timber claim?

A. Is he that newspaper man, a tall, dark man—Yes, I might have; did he testify that I did?

Q. I don't remember.

A. Well, I know what it was; I never was in Portland but once until the spring of 1903, and I don't believe that I saw Mr. Wheeler the first time I was there; I know that was what he evidently referred to; his testimony was about something I said to him in reference to the Hood River country in Western Oregon. I was engaged, at that time, in the spring of 1903, in promoting and starting a canal company, and canal, for the purpose of irrigating lands at Hood River. We never got very far in the matter, but we had made survey, we had got a right of way about 26 miles, and while I was there a great many timber cruisers came, and the lands were being taken up, and had been pretty thoroughly taken up on sides of Mt. Hood. One cruiser told me there that he had some men, and his price was \$125, for filing people on them, and I told him that I didn't

(Deposition of John Kinkaid.)

want to file, that I supposed all of the lands in Oregon were gone at that time, and he said that he could get plenty of land, that had good timber on, and that was in my mind when I was in Portland,—which I think was about 70 miles west of there,—a few days afterwards, and I met Mr. Wheeler; I had known Mr. and Mrs. Wheeler in the Boise Basin; he was a carpenter up there, and contractor, and I knew his wife and him at Boise; she had worked in the Post Office a long while there, a most estimable woman, and they were very nice people, both of them, and when I *was* Mr. Wheeler, I said, “Why don’t you take some of this timber land”? He said, “Don’t know but I should do that,” and I said, “You ought to be able to do it,” or something to that effect.

Q. Your conversation, then, had reference to the Hood River lands? A. Yes, that is all.

Q. Do you know Norman H. Young?

A. Yes, sir; very well.

Q. Do you know about his entry?

A. He was one of the brightest and best men in the Boise Basin.

Q. State what you know with reference to his entry?

A. I know that he entered, and I know that I bought his claim afterwards, and I understand from you that he testified something about my telling him to file, and I probably told him to file, and told him it was better for him to do it than those Wisconsin men to do it, as he was there at Centerville; he lived

(Deposition of John Kinkaid.)

in Centerville, was born there, and lived there all his life, and I told him I thought he had better locate lands in the Basin and hold them.

Q. What were you paid by Mr. Sweet or by Mr. Sweet and Mr. Stunenberg for trying to secure title to the Boise Basin lands before you left for Thunder Mountain?

A. Nothing whatever, because I had not bought any, and I was simply a kind of depositary for the money that Mr. Sweet would leave me for the co-partnership business that they had.

Q. When did you first learn that Mr. Sweet had sold out to Stunenberg, or to anybody?

A. Well, I don't know; Sweet and Governor Stunenberg were together there sometime in January and February to my recollection.

Q. You are speaking now of when Mr. Sweet sold out his interest to Mr. Stunenberg?

A. No; when Mr. Stunenberg took an interest with Mr. Sweet when they were trying to get up a deal, and go and sell it.

Q. Did you know what that deal was?

A. No.

Q. Did you afterwards have anything to do with getting a settlement between Sweet and Stunenberg over some of their matters?

A. What you refer to it, I think, some testimony that Mr. Worthman gave, and it was my recollection when Mr. Worthman testified to that, I think that was the only thing that would have called my attention to it, or made me remember anything about it

(Deposition of John Kinkaid.)

now, it was that Mr. Worthman was mistaken about that; he gave me credit for having done something for Mr. Sweet there which I would really gladly have done, but which I didn't do, and I would have done Mr. Sweet a favor any time, but it seemed that Mr. Stunenberg had Mr. Sweet's money when Mr. Sweet had sold out to Mr. Palmer, or to those other parties; that Mr. Stunenberg had kept the money and had not delivered it to him, and Mr. Sweet had been writing to everybody about it, to Judge Richards and to Mr. Worthman, to get a settlement. He wanted his money and Mr. Worthman testified that I got the settlement and contract of settlement, and that I took it down to the Bank of Commerce. Now, that was not true; he was simply mistaken about it, but Mr. Worthman did ask me, because he and I were very intimate friends and that was one of the pleasant things I had out of the Legislature; he was just back from the Philippines, and we were in the State Senate together there one session, and he came to me and said, "Can't you get this thing settled up?" and I told him I didn't have anything to do with it, but I did tell Mr. Stunenberg, "If you owe Sweet anything, you ought to pay it and not let it drag along any longer," and that was the last I ever heard of it.

Q. Did you draw any contracts of any kind between Mr. Sweet and Mr. Stunenberg, in any of their matters?

A. No, not with reference to timber matters, because I was not their attorney.

Q. Did you ever see any of their contracts between each other?

(Deposition of John Kinkaid.)

A. No, there was some reason why—if they had a contract between themselves individually I never saw that; there was some reason why I did not, there was some reason why they didn't want me to see it, and I never saw the contract which Governor Stunenberg had made with Mr. Palmer or Mr. Barber; he asked me about my construction of it several times without showing me the contract and I told him that I didn't construe contracts that I had not seen.

Q. Did you ever see it?

A. No, and I think the reason was because he was much excited over them holding him to it; I think the reason why I never saw the contract was that he didn't want me to know what he was getting out of the thing; I understood that he had an equity, that he was being carried.

Q. Did you make out any filing papers for any entryman or entrywoman prior to the time you went to Thunder Mountain, or returned from Thunder Mountain?

A. I might have done so, I don't know; if I did I don't know who it was, and I might have done so.

Q. Do you remember a man by the name of Homer Granger who entered among the first ones up in the Boise Basin?

A. I remember him from '98, when I went in there, he worked for me a year, at different times.

Q. State what you know about his entry.

A. Well, he came to Boise sometime I think in December and I want to correct my testimony in regard to saying that Nugent and Anderson told me what Carl Payne, the District Attorney had said

(Deposition of John Kinkaid.)

about people filing upon the timber lands. It was, I believe, that Nugent and Anderson also told me that, and I know that Granger told me that; I might be mistaken and only Granger told me, they were very much afraid that it would give them and their families a lot of trouble if they went ahead and did it; and he had worked for me in the mountains, was a miner, and we had been good friends and I told him I thought it was a shame for a man to be bulldozed out of his rights to file upon any land that he wanted to under the laws of the United States, and that my construction of the law was to the effect that no man could enter into any of the Government lands if he could not enter the timber lands, and do it honestly, and I told him to go and see any lawyer that he liked about it, that if he did that then he would be better satisfied, and I understand he says that I paid him some money for that purpose. I know I paid him some money at that time and I know what money it was too, it was money that I had owed him for several months for mining labor for me. I paid him \$55 and I think that is what he referred to. I don't want to have credit for having done something for Granger more than having paid him what I owed him.

Q. What bank accounts did you carry in 1901 and the following years that you were in Idaho?

A. I carried a banking account in the First National Bank of Idaho for myself and others, and that was closed sometime in the summer, I think, or practically closed up and the money drawn out.

(Deposition of John Kinkaid.)

Q. Summer of what year?

A. The summer of 1901, and then I had Mr. Bowen's account, that was an agency account for Mr. Bowen, as I have already testified to, and that account was just about closed, or entirely closed and settled up when Mr. Ingalls, the gentlemen I have mentioned before, came to me one day and said, "I want you to see to some matters of mine; I am going to Texas pretty soon for the winter, and he gave me that day \$1250. I think it was likely his draft drawn on Brownwood, Texas, that he gave me, and I went over to the First National Bank, and when I went to deposit it, I thought about my other account, and it was closed, and I just put "Agent," the word "Agent" in my pass-book, and the next few days I began to check on that and paid it out and he paid me, I think, \$400 or \$600 more before he went away, and he subsequently sent me other money, but I never drew any of those checks as agent because I commingled that trust account of Mr. Ingalls with my own account, or with the bank account.

Q. So that you kept all the money arising from Mr. Ingalls and all of your own personal accounts and Sweet's accounts all in the same account?

A. All the money that I had in that account, and I paid for my own board and for everything that I had, all the business that I transacted in the bank with various people and myself, from that account, including the purchase of this land.

Q. Did you ever employ or procure Downs to cruise for you in either of the Crooked River, Boise Basin, or 6-4 countries?

(Deposition of John Kinkaid.)

A. No, he paid me some little amounts several times, I never employed Mr. Downs.

Q. There is some evidence of your having employed Harry Worthman in the contest cases of Arthur Anderson, and Bert Nugent and others; can you state the facts about that?

A. Yes, John Wells was speaking to me and he said he had received notice from his brother Harvey at Centerville that there was some contest to be held, and for him to employ counsel to do the business and to make a demand for the hearing and do whatever was necessary for the defendants, and John said he didn't know who to get and he wanted me to see about it, and I told him I didn't want to do it; that I was not practicing and would not want to be there, and I didn't want to do it, and he had better get somebody else, and he said, "Who would you recommend?" and I said I didn't care to recommend anybody, and he knew that Worthman was a friend of mine; at least he asked me to see Mr. Worthman and see if he would not make the appearance for his brother, and I think perhaps at the same time, or the next day or so afterwards, he heard from Hunter, and perhaps Ball and Arthur Anderson, anyway the applications were made by—I made an application to Mr. Worthman to represent those boys, and defend their titles. As I understood it, they were all right, and straight, and they were the only Basin men that I found at that time were really getting their lands. It looked to me that everybody else outside that country were getting their lands, except those that

(Deposition of John Kinkaid.)

lived in the Boise Basin, and I asked him what he would charge, and he said he didn't know, but he would make the application and let them arrange for the fees when he came down, as it would not cost much to make the application for the hearing, and I told him to file the papers, and he did so, and I never paid any more attention to it until afterwards, and I think it was a year afterwards, a long while, that those hearings came up, and when they came to have those hearings, Mr. Worthman was engaged in the promotion business, of a very large canal and irrigation proposition also, on the Emmet Bench, and had been engaged in the business for several years and he was just about to consummate the deal, and raise the money, I think it was several hundred thousand dollars that he had to promote the deal. The Examiners were there, as I understood it at the time, and they were looking at the property and he could not, or would not, devote his time to anything else, and the boys went and hired Frank Martin, and Worthman did nothing about it whatever except to appear a few times, as I understood it.

Q. Did you pay Mr. Worthman something for that?

A. I paid him; Mr. Worthman I don't think ever made any bill for it in writing, but he came and said, "Those men have never paid me anything and you are the man that hired me," and I told him that that was certainly true, and I asked him how much it was; I didn't suppose it would be any great amount, and he said it would be \$250, and I gave him \$100 then

(Deposition of John Kinkaid.)

and I said, "That is all right," and subsequently came to me and he said he wanted me to go on a note with him at the Bank of Commerce for \$150, for the balance of that fee, and I did so.

Q. And you afterwards paid the note?

A. Yes, I paid it. But I didn't pay that note for a good while because I was getting pretty hard up, and I think the last of that note was paid when I sold some mining property up there, the Buckskin property, perhaps in 1906 or 1907.

Q. Did Governor Stuenenberg ever repay you the \$100 you paid, or the \$150 you subsequently paid on the note?

A. No, he didn't. I never said anything to Mr. Stuenenberg about it.

Q. It appears from the stub-book of Mr. Stuenenberg that on December 17th, 1903, he gave a check to John Kinkaid, and it is noted on the stub,—“for expense for trial commission”; do you know anything about, was it to be charged to your commission?

Q. Was that about the time of the hearing?

A. Yes.

Mr. GORDON.—I will state to the witness that there was some question in the mind of Mr. Bundy and myself whether the “Com.” in reference to that item was “W. M.”

Mr. BUNDY.—There was no question in my mind; I will show you how it was written. (Indicating.)

A. I can tell you all about that. That word

(Deposition of John Kinkaid.)

“Com.” simply meant about his own bank, or the bank of his brother down there in Caldwell, so he could keep his accounts straight, but that was out of that fund that he was to purchase the Crooked River tract with, and he would use the money out of that fund, which was a commission fund, and which was the accumulation of the \$150 each upon the claims which he had not paid for in the Crooked river tract, and that was just simply a fund that he used that out of; but it was my own money, and you will find all along, if you have a true transcript of his checks, you will find all along there that commission account I think for other people, and for other things, and it was simply to appear that way to his own bank so he could keep that account straight.

Q. On December 31st, 1903, there is a check for \$380 to John Kinkaid for commission and expenses.

A. That was the same thing, that would be the same thing.

Q. I will ask you generally, whether or not, you had any arrangement with Governor Stunenberg with reference to his paying attorneys' fees or other expenses of the contest cases of Arthur Anderson, Bert Nugent, Harvey H. Wells, Ball and Hunter?

A. I had nothing of the kind; but I can tell you where we were both interested and the statement was claimed that these entries were fraudulent, and all other entries up there were fraudulent, that was the starter, and that if they knocked those out and showed that those were fraudulent, they would take them up seriatim and everybody else was the same

(Deposition of John Kinkaid.)

way, and where I was interested in it was this: I bought practically all of that tract up there in Boise Basin and all of the profit I would have made out of it had not been paid me, and in fact, I was out some money for that tract at that time and at the time of making the loan.

Q. Now, with reference to the large amount of money that was paid you at the rate of \$150 per claim for each of the 93 or 94 claims which you purchased in the Crooked River country, I will ask you if all the money went to you personally?

A. All of that money belonged to me, absolutely personally.

Q. Was it all actually paid to you by Governor Stunenberg?

A. Yes, that is, there was a large amount paid to me, I think about \$12,000, it might have been just a little more or less; I have it in my mind as I saw it in my books, about \$12,000, and all that commission that was paid me and that belonged to me—it was mine, but Governor Stunenberg told me that he was working for those men Barber and Moon, as an agent to purchase that property,—

Q. (By Mr. GORDON.) What property?

A. The Crooked River property as a separate tract and separate proposition from the Boise Basin tract; that had nothing to do with his contract and that he was only doing that to help them out and that they were not paying him anything for that and not furnishing him any money for expenses for traveling or otherwise; that he was devoting his time to that

(Deposition of John Kinkaid.)

business, and that he wanted me to divide up that fund, not permanently, but to allow him to reserve half of it until the deal was through, until all of the property was turned in, that I should secure out there on the Crooked River, and that he would pay that back to me. It had formerly been charged he told me, by Mr. Palmer, that he was participating in my profits, or possible profits in the purchase of the Boise Basin tract, and Mr. Palmer had made that charge to Barber and Moon, as I understood it, and they had asked Governor Stunenberg whether that was true, or not, and he had replied that it was not, and it was not. There was no doubt about that. He was not participating in those things in any way and he was not to own the half of the profits that I should make on the Crooked River at all, but he said that he would hold that back, he would like to hold that back, and hold it for me, and he said that he would use the funds during that time and that I would get them all at once, and it would be better for me, and that would be when they had paid him for service in that connection, and that Mr. Barber was a just man and he knew that he would be paid for his services for whatever he had done, and his expenses. I knew that Governor Stuenberg, from his own statements only, was owing a great deal of money, I think it was \$40,000 or \$50,000, or something of that kind, and that he owed various people, but his credit was wonderfully good, and especially his banking credit; he could get any amount of money from any bank he wanted to, as far as I knew, and I told him that he

(Deposition of John Kinkaid.)

could hold half of those funds, and that was very early in the Crooked River deal; that was before any commission whatever had ever been paid me, and the first check that was ever drawn was \$4,000 to my recollection, as commission, and I went and cashed that check, and I divided the money with him. I did that with every other check that was ever paid to me on that account.

Q. On the commission account?

A. Yes, on the commission account, and nothing was given to me for it,—it was not a business proposition, but it was a friendly proposition.

Q. That applied only to the Crooked River tract?

A. Yes, and he agreed to pay it back, and would have paid it back if he had lived, and when he died there was owing upon that account a gross sum of \$1,875 according to my recollection, and that was one of my items of account. I didn't put in the account for the loan and return or division of these funds which I had let him have, because I had no evidence of it, no legal evidence under the laws of that State, and I went and presented the matter to Mr. A. K. Stunenberg, who was not his administrator, but he was the banker brother, and the one who saw to most of his business, and he said, "I don't know anything about that, but you ought to have some evidence of it," and he took a bankers' view of it, as he would naturally do, and he said, "If I believed that that thing was due you, I would pay you," and it was a pretty hard thing to face his incredulity, practically saying that I was misrepresenting things,

(Deposition of John Kinkaid.)

but he was honest in his beliefs and convictions.

Q. Was it ever paid you?

A. It never was, and I never put in my account for it; I didn't present it either for the balance that was owing upon the Boise Basin tract. I didn't present my account because they said they would not allow it, and I showed the whole thing, first I presented it to John Rice, a very prominent attorney in that country, attorney for the Stunenburgs, and I presented it to him, and to A. K. Stunenberg in the bank, and spent a day with them, and they agreed that they would check over that account and would allow me all that was just and legal, and they did, and I was paid the \$1,875, I think the balance, which would save been the exact balance upon the Crooked River account, and I was paid some mining accounts, and they filed my account in court, and it was allowed for more than they paid me, but they paid me about \$2,200.

Q. I understand they paid you \$1,575.

A. \$1,875.

Q. Was that for half of the commissions?

A. That was for all of the balance of unpaid commissions; that was the entire amount of the unpaid commissions.

Q. So that part that you split and returned to him, that never was paid?

A. That never was paid, and the only account that was not split was the \$1,875.

Q. Mr. Wells testified to having received a telegram asking him to come down here; will you state

(Deposition of John Kinkaid.)

how you came to telegraph Mr. Wells?

A. I think your letter from the Fairmont Hotel, San Francisco, the 24th of March, telling me to meet you here, about the 29th of March, 1902, and in which you say, "I have also sent for Wells to be there on Monday the 29th, and would suggest that you wire him upon receipt of this telling him where he can meet you." After that I wired to John I. Wells and asked him on what train going through Reno, Nevada, I could join him, and I got an answer at Reno saying that he would be through there the morning of the 30th, I think, and I came on the day before to Oakland; I had some business there and I came on down here, and I had been here 24 hours when Mr. Wells arrived.

Q. Will you state as briefly as possible, what became of any books of accounts or records you kept of these various timber deals in Idaho?

A. I am not a good bookkeeper, but I kept those accounts absolutely perfect, as they occurred, and they were kept in small account-books, and the first one that I kept the account in was the first timber account that I had for the purchase of the Basin tract, and I kept that in my office, or room and it was there in 1905, when I was out mining in the Black Warrior District; I built a mill up there, but I kept my room in Boise yet, and that book disappeared from my office.

Q. (By Mr. GORDON.) When was that?

A. In 1905. It disappeared from my office. I had a large iron box with a Yale lock on it, and that

(Deposition of John Kinkaid.)

lock was broken when I came back late in the fall of 1905, and that was the only thing that was gone out of that box; my bank-book, two bank-books, really I kept myself; I don't mean my pass-book, my account with the bank, and every account that I had had in the State of Idaho, I had in two small account-books, one of them was about a quarter of an inch thick, and the other was about three-quarters of an inch thick I would say, and those I carried with me because they had most of my accounts and all my mining transactions that I had done in that State and part of my Colorado business and accounts; I carried those with me into the Black Warrior, and had them there with me, and those I saved. I saved those and had them at the Borah trial; had them up there when I was taken up there upon the indictment at Boise, from the State of Nevada and I carried them upon my person in order to preserve them. In those books there was an absolute account of every check showing to whom the check was drawn, the date, and usually, all on one line, some indication as to what it was for, so I would understand it. There was a two-page ledger account, single entry I suppose you would call it, and then every claim that I bought, that was in that bank-book and in that book generally was the Crooked River tract, and there was an account of the purchase showing every item and everything that was paid in the purchase of all the land I purchased in 6-4. That was itemized and I could have testified to every item in all of these transactions if I had it. I took those books back with me,

(Deposition of John Kinkaid.)

to Rawhide and I kept them in my office; it was in a new mining town and there was not a safe in the town, and I kept them in my office, I practically lived in that room, slept and stayed in that office, and no one had a safe in the town at that time, and I didn't deposit those books in any safe deposit vault because there was not a vault in the town, and in August last I went out to look at some mining property about 100 miles east of Rawhide, or more, with a team, and was gone eleven days, and the last day I was out, at Lodi, which is 40 miles east of Rawhide, over a very sandy road, a bad road, and in the morning I was driving in to Rawhide over the sand and about 9 o'clock or 9:30, I saw a great smoke in the direction of Rawhide, and that was the fire that consumed the town of Rawhide, and all of the business portion of that town, including my office, and everything that was in it, except one drawer of the table that Mr. Ross, a friend of mine, pulled out and carried out and saved for me, and he almost lost his life over it. And the account-books which I have referred to were destroyed in that fire, and everything else that I had in the State of Nevada in the way of personal things, were destroyed.

Q. Can you testify here without the aid of this documentary evidence, without this data?

A. I could have gone over this data that you offer to me, but I can't remember what those various checks or accounts mean, except in a general way. I remember the outlines of the facts, but I remember them very largely from the way they appeared on my books.

(Deposition of John Kinkaid.)

Cross-examination.

(By Mr. GORDON.)

Q. You never gave anyone a copy of those books that you had, those account-books?

A. No, I didn't; there may be a copy of them, the Government may have a copy of them, I don't know.

Q. Were those books used at the Borah trial?

A. No.

Q. Did you offer them to the witnesses in the Borah trial?

A. I told Mr. Borah that I would explain, and testify to papers; those three items and the books, the reason I mentioned the checks is, that is the checks all supported the account, whenever it was paid in checks.

Q. You say one of those books was three-quarters of an inch thick?

A. It was about five and one-half inches long, and about four inches wide.

Q. How long did you carry that book about your person?

A. In Boise—I carried it there most of the time.

Q. What became of the checks?

A. The checks—I don't know. There was some trouble at Boise; I don't mean to judge, and say who got those checks, but I lived in Boise, stayed in Boise, was there when Governor Steunenberg was assassinated, and after all the difficulties that arose over the prosecution and trials, but I didn't have anything to do with those prosecutions, nor the defense in that connection, or anything of that kind. My friend

(Deposition of John Kinkaid.)

Governor Stunenberg was dead, and that was the end of it.

Q. I am asking you about the checks?

A. The checks I had in my room in the Marius Building which I kept whether I lived in Boise or not, and I kept all my personal effects that I had in Idaho—I kept my checks and all my books and things in a mahogany bookcase, and it had a closed bottom—the lower section closed up, and I kept a great many papers there, and in December, 1906, when I was preparing to leave for Nevada, I went through all those papers that I had there; I had something like 18 or 20 letter files of my correspondence in that State, and I didn't want to pay freight on all that I took all them and burned and I went over all my papers that I had brought from Colorado and books, and everything that I had that I thought were too old to be used, and I burned them up until I came to those checks and I have had some bitter experiences for the want of checks that I have given—

Q. Where did you put the checks?

A. I left those checks,—I put them in little envelopes that would be two or three inches thick and I labeled them and put them in the bottom of that mahogany bookcase. I left that bookcase there and gave orders to my friend Mr. Walters to have it shipped with a lot of my other stuff to Nevada when I should find out where I should locate in Nevada, or elsewhere, and he must have shipped that stuff to me in January or February, 1907; it was first billed to Lovelocks, Nevada, because I believed that I would

(Deposition of John Kinkaid.)

locate there in the Seven Trough mining district which was near Lovelocks, and they were billed there and after that the camp of Wonder was booming a great deal, further south of there, and I went down there and the railroad station for Wonder was at Fallon, Nevada, and I ordered those goods shipped to Fallon, and they were in a cart there when I was arrested at Wonder and taken to Carson, and from there taken to Idaho; the goods I ordered stored as I went through, I went through Fallon with the Marshal. I paid the storage man to take care of them, and he held those goods for nearly a year, fully a year. I was out in California afterwards and I never saw those goods or the bookcase that was crated and boxed, and after the fire in September 4th, 1908, in which Rawhide was burned down I remembered that I had that bookcase and those old papers over there, and I sent for that case, and I have it yet in Rawhide, and when the bookcase came the first thing I looked for was those checks and they were not there; those checks would show exactly to whom they were given, but, of course, would not show upon the face of them for what they were given because I never draw checks that way; where those checks have gone, I don't know.

Q. Did I understand that you are here not, only as defendant in this suit, but as counsel?

A. Well, now I think that was a mere matter of compliment or something of that kind on the part of Mr. Bundy; I have never been employed as coun-

(Deposition of John Kinkaid.)

sel in this matter; I am here as a defendant at Mr. Bundy's request.

STATEMENT BY MR. BUNDY.—What I meant by saying that I wanted Mr. Kinkaid to assist me in this case was not as Attorney, but due to his familiarity with the facts about which I wanted to interrogate Mr. Pritchard and in some instances Mr. Wells; that was what I referred to by saying that I wanted his assistance in the examination.

Q. (By Mr. GORDON.) Do you remember, or do you know Frank Martin, Ex-attorney General of the State of Idaho? A. I know him very well.

Q. Did you at any time tell him to draw on Frank Stunenberg, Agent for a bill, in the amount of \$187, or thereabouts, in payment for the records in the Land Office at Boise of the contest cases of Arthur Anderson, Bert Nugent or Abel Hunter?

A. I don't remember of telling him to do that; I don't remember why I should have told him to do so. I don't know that he said I told him so; I never heard what he testified in regard to that, and I don't know of anything of the kind occurring. I know that at the Borah trial, either by the counsel for the defense, or someone, that question was raised, but I don't remember anything of that; it was one of the things that I don't remember, but I might have done so, or I might have told him that I could not pay him anything because I didn't have the money.

Q. You didn't employ Mr. Martin in those cases?

A. No, sir; I had employed one attorney and the boys for whom I had employed him said that he

(Deposition of John Kinkaid.)

didn't stay with them; I had had enough to pay in being a good fellow.

Q. Did you ever have Mr. Worthman purchase any claims in the Boise Basin for you?

A. I don't remember that I had him purchase any claims, but all that is in the Crooked River tract, I think.

Q. Who were the deeds made to in the Crooked River tract?

A. To Mr. Rand, and if he did anything he might have taken those deeds for me and from Mr. Gifford and from some of the Omby family; he might have done that, they were clients of his, and it was with him or from him in some way that I bought some of those Omby claims.

Q. Do you remember that the deeds were drawn by Mr. Worthman and that the grantee's name was in blank, and that you afterwards filled in the name of Rand of Burlington, Iowa?

A. I don't remember—I never took a deed in blank in any of my business. I have been practicing a great many years, and I have never taken a deed in blank. Mr. Worthman might have written those deeds, and he might have drawn them to me, and I might have written in the name, but it was undoubtedly done before they were executed, so far as I found, and I ought not to have been mistaken about it.

Q. Now, when was the first occasion you ever met William Sweet?

A. I met William Sweet when I first went into

(Deposition of John Kinkaid.)

Boise Basin in the summer of 1908, I mean 1898.

Q. Did you in 1899 draw a contract concerning some mining property between Mr. Stunenberg and Mr. Sweet?

A. I might have done so; I don't want to be understood as saying that I didn't, but I have no recollection of that; I have transactions with Mr. Sweet, and I might have done it, and if I did it was undoubtedly an accommodation.

Q. Now, did you have any arrangement with the First National Bank of Boise, or the First National Bank of Idaho, I believe it is, by which you could go to that bank and get money for the purchase of those claims whether you had money to your account, or not?

A. No; and that is one reason I have not examined this account here; I know that the account cannot show the proper transcript, and I can't swear without having my books here; I can't swear that it is not a proper transcript, but it undoubtedly is, I guess, and if that thing is right it undoubtedly shows—an accountant can take that and show that I had no such arrangement of that kind; I have heard a good deal about that thing, but I never had that kind of an arrangement with that bank or any other bank.

Q. Did you have an arrangement with that bank by which a person selling a claim, could take a note or letter to the bank, together with a deed made out to anyone of these three persons that have been named, Mr. Palmer, Mr. Rand and Mr. Long, and the bank would pay them the consideration mentioned

(Deposition of John Kinkaid.)

in that deed?

A. I had nothing of that kind; if I had drawn a check there on that bank that would have appeared an overdraft I would have been called up at once, and I would have been told about it, and would have been asked to pay my check, and of course this account may show that some days I had an overdraft over there, but the overdrafts that I had during any of this time were included in my bank account, but would have been for a very short time only.

Q. You might, or you might not have had an overdraft of \$300 or \$400 for a day or so?

A. That would have been very rare; I remember in 1905, for ten days when I was operating at Black Warrior Mining District I had lost a good deal of money, and I learned in town that an overdraft of \$500 or \$600, that is, my checks were being held up, the men had not been paid and I went in and made *the good* immediately, and then my checks were paid. My checks were in the bank—

Q. Your account in the First National Bank was in the name of John Kinkaid, Agent?

A. Yes, I know it now.

Q. And you put everybody's money that you had into that account as agent; it was the only account you had there?

A. Yes, everything, and when one has but one bank account he can't very well do otherwise, at least that is my system of books.

Q. Did you have any understanding with Governor Stunenberg by which he should deposit the money

(Deposition of John Kinkaid.)

that he gave you to your order at the bank, instead of making it payable to you in check?

A. Yes, I did; that occurred especially with that Crooked River tract, but it occurred each time when I had telephoned him, or Senator Borah that I had taken titles, and that I was drawing checks upon the bank and that occurred because I was their buyer in taking those deeds and titles; and sometimes I didn't go to the bank—I didn't have any clerks or assistants, and I was drawing a good deal more money than my account was, and I presume they made several different deposits the same day. My recollection is that they made several deposits of \$6,000 each for me about the first days of the purchase of timber in the Crooked River district.

Q. There were a great many more than three or four of those entries, were there not?

A. I remember those times, and they went and put those amounts there for me. That only occurred about the beginning of that purchase when I was so very busy, the first two or three days and it occurred once with Senator Borah, when I telephones him to go and deposit some money for me that I had paid out on 6-4, or was about to pay out on the 6-4, more money than I had.

Q. It all amounted to \$47,000 or \$48,000?

A. Which?

Q. That you obtained in that way, that you had deposited to your credit in the First National Bank?

A. I don't think that it amounted to that much, it only occurred, as far as I can remember, a couple

(Deposition of John Kinkaid.)

of times.

Q. Do you understand that I am talking about checks that were drawn to the bank and placed to your credit, and not drawn to you?

A. That is the way they did it, when I telephones them or told them, but I can't tell you how much that was.

Q. And do you remember whether or not that time extended from June 17th, 1902, to December 31st, 1903, about 18 months?

A. Anything that occurred at that time would be upon the Boise Basin tract; that was one way that they might have transferred money to me, but Mr. Borah had nothing to do with that on the Boise Basin tract.

Q. Do you remember an item of \$500 that was placed to your credit December 31st, 1903, by Governor Stunenberg on an option for William Sweet?

A. On an option—Let me see that paper; I have no recollection of that matter at all, and I don't think I ever had anything to do with that. I don't think that that will indicate that I did; I don't believe that that has anything to do with me.

Q. It was a personal check of Mr. Stunenberg's that was placed to your credit at the First National bank; it shows that it was placed to your credit?

A. I don't desire to take up any time with that, because I don't know what it means; I don't know anything about it.

Q. I beg you pardon; it was from the stub of Governor Stunenberg, instead.

(Deposition of John Kinkaid.)

A. That is something I had nothing to do with.

Q. Mr. Kinkaid did you ever loan or advance any money to any person to make final proof in the 6-4 entries?

A. Yes, I think I did.

Q. To whom?

A. I loaned some money to Alexander Ellis, a blacksmith, and I lent it to him for himself; I lent him \$800 for himself, and I think Harbaugh; there was nothing about that matter but what I want you to know fully, and I think I remember pretty well all of it. I knew Mr. Ellis very well; he owned a couple of lots over there, and a couple of buildings, he was a good strong Scotchman and I used to watch him shoe horses, and he told me—he brought me his papers when he was about to make his filings on 6-4; he was one of those men for whom I prepared the papers, but I had seen him before and knew him quite well.

Q. Lived at his house, didn't you?

A. No, sir, not until afterwards; he was mistaken about that I think, and about the time he was ready to make final proof, he told me when I happened to be talking to him one day, and he told me that he had gotten two of his boys and their friends, being Harbaugh, and Coleman, and himself filings up there and that they were going to have some timber up there, and they were not going to be fools like the rest of those timber people; he said he had been in the timber business in Michigan and had seen the first people, and the poor man who took up timber claims lose their timber when they might have gotten little

(Deposition of John Kinkaid.)

fortunes out of it, and they were going to take that timber up and hold it; and I told him I hoped he would do so, and a short time after that, and I suppose it was when they were about to prove up, to make their final entry, Mr. Coleman came to me; I had met him in the blacksmith shop, or had met him at least when he had filed, and he came to me and said, "Us fellows are up against it, and we can't prove up," and he said, "I was to get my money from somewhere east, my people, and I can't get mine; I thought I had arranged all right for it, but Ellis can't prove up either; he expected to get his money from Neal, of the Capital State Bank of Boise, and he was unable to borrow it there but he can't get it at this time;" and he said, "Ellis told me to come and ask if you will lend him the money," and he said he asked Ellis why he didn't go to Mr. Kinkaid and see if he wouldn't loan him the money and he said he was ashamed to go and see me after the talk he had made about the thing, and he said that Ellis wanted to borrow the money for himself and for Mr. Harbaugh who had failed to get his money, and would give his note for it, so I gave Coleman what money I had in my pocket, what money I had available at that time, and I think I gave him \$400, and I went out and got the money, and it might have been a banking day; I might have drawn it out, but don't know whether I did or not; when I was living at the Idanha hotel I sometimes kept a package of bills over there in the safe; Mr. Shubert would put it in the safe for me, and I might have had it there and paid him

(Deposition of John Kinkaid.)

from that; when I was in the Pearse building there was a vault in that and I sometimes kept a tin box down there.

Q. You either got the money out of the bank or out of some place where you kept money?

A. I remember I had \$400 in gold and I gave it to Mr. Ellis.

Q. In his shop?

A. Yes, in his shop, in gold not in bills.

Q. And was that for the Harbaugh claim?

A. He told me that he had gotten—

Q. Did you loan him that for Mr. Harbaugh?

A. No. The Harbaugh money I gave to Mr. Coleman.

Q. You gave the Harbaugh money to Mr. Coleman?

A. I took a note with him for \$400, and Mr. Ellis signed it.

Q. Did you loan Mr. Coleman any money?

A. No.

Q. Did he ask you to loan him any?

A. No, he didn't.

Q. Do you know where he got his money?

A. No, except that I heard him testify at the Borah trial that he got it from somebody else.

Q. Now, these 6-4 lands that you have purchased, you didn't pay for them out of the money that you got from Stunenberg?

A. I got the money each time after I bought the land; I would get the money from Mr. Stunenberg or from Senator Borah.

(Deposition of John Kinkaid.)

Q. How much money did you get from Senator Borah? A. From \$6,000 to \$10,000.

Q. And did he give it to you in check or cash?

A. He gave me one check for \$1000 and he gave me that in advance, because I deposited that in the First National Bank, and I gave my own check to Riley Reeves for his claim, for \$1000.

Q. Did you buy all of the claims in the Boise Basin, Crooked River and 6-4 country that were acquired by Governor Stunenberg?

A. All that I know of this acquiring, and I presume that he was not acquiring titles aside from those at that time.

Q. It was his instructions that he should not be known in the transactions for the reasons that you have assigned?

A. I didn't say that Mr. Stunenberg was getting the titles because that would raise the price, and I never went out of my office to ask any man to sell his property or title, and get his title, in fact, I hoped that most of those fellows would hold their land until it got more valuable.

Q. I understood you to say that a week or more before the State made its selection in 6-4, that Downs came to your office and paid you \$20 in advance for certain information you had tried to obtain for him?

A. He told me to go and find out all I could about it; I think it was a twenty dollar gold piece.

Q. Have you any idea who the man was you got that information from?

A. I don't now have the least idea.

(Deposition of John Kinkaid.)

Q. It was not the Governor?

A. No, I don't think it was, but I would have asked Governor Morrison for that perhaps sooner than anyone else.

Q. It was not his private secretary?

A. No, it was the same private secretary he had, but I was never very well acquainted with him. I don't suppose I was in Gov. Morrison's office more than two or three times during his term of office.

Q. And you don't know who it was?

A. I don't know who it was; all I do know about it is that there was nothing mysterious about it, and nothing wrong about it.

Q. It was not anybody that you had known before that you got that information from?

A. I do know whether that is true, because I would likely remember it.

Q. And there was no question about it being turned over to you when you asked for it?

A. No, and I attached so little importance to what I did in the matter that the facts had entirely escaped my mind until the trial.

Q. You had a plat given you of lots in 6-4 by Downs, and there was indicated on that plat what he thought the State was going to select; did I understand you to say that?

A. Yes, just as ordinary plat, and he had indicated on there the pieces he knew about.

Q. And did the marks that he made on there correspond with those that you saw indicating what the State would select, at the State Land Office?

(Deposition of John Kinkaid.)

A. My recollection is that I was in the State house at the time, but whatever I got in regard to it, I got in a few minutes.

Q. Do you remember how many pieces of land Downs had checked on there, as the properties he wanted?

A. He had indicated what was really good timber land.

Q. How many pieces?

A. There was a great number; he undoubtedly knew the larger portion of the land; I think he had an idea of the larger portion of the land that the State was about to select.

Q. You say that you had met A. E. Palmer?

A. Yes.

Q. Do you know where he is now?

A. No, I don't know anything about him now; I have seen him in Boise, but he was a very pleasant appearing gentleman, but we didn't have anything to do with one another; it was not my business to interfere with Governor Stunenberg's business; Mr. Stunenberg and Mr. Palmer were not on the best of terms at one time I know.

Q. Do you remember the occasion of Dennis Thornton coming to your office the first time you ever saw him?

A. Yes, I remember he was there.

Q. Do you remember that he brought a letter of introduction to you from A. E. Palmer?

A. He might have done so, but what he asked for I didn't have; I didn't think much regarding it; I didn't know who was coming, or anything about it

(Deposition of John Kinkaid.)

until this man came there, and then I remembered that Governor Stunenberg had left an envelope there.

Q. That was there when Mr. Thornton arrived, was it, and you gave it to him?

A. Yes, and I also gave him some files of the newspapers.

Q. Did you see what was in the envelope that you gave Mr. Thornton?

A. I don't believe I did, I don't remember.

Q. I understood you to say it was a plat?

A. Yes, but I don't know what was on the plat that he left there; I gave whatever he left to the man that called for it and that was Mr. Thornton.

Q. Did you subsequently have a conversation with Mr. Thornton, Mr. Palmer and Governor Stunenberg at the Idenha Hotel?

A. I don't think so. I met Mr. Palmer, and it might have been that Mr. Thornton was present.

Q. You have spoken several times of the sale on interest that Mr. Sweet had made; I think you said that he sold out to some of Stunenberg's people; do you know what he sold, or what he had to sell?

A. That was just the trouble; they hadn't anything to sell, but as I understand it,—but they had secured a purchaser for those lands, they told me they had secured a purchaser for those lands, when they could be purchased, and they had gotten funds for it all right.

Q. When was that?

A. That was sometime in—I suppose about the

(Deposition of John Kinkaid.)

first of April, 1902.

Q. Was that the time that Mr. Sweet had told you that he had sold out?

A. When he had sold out entirely you mean?

Q. Yes.

A. Yes, if he ever told me that it was at that time; I understood that so far as making the deal was concerned that Mr. Stunenberg had charge of the thing from that time on. I didn't know of anything he sold, because I didn't know of anything they had bought.

Q. But he had sold whatever interest he had in it?

A. He turned the sale over to Stunenberg, and it was agreed that if the property was taken that he should get some amount out of it.

Q. And what was Mr. Stunenberg to get?

A. I have heard, but I never saw the agreement.

Q. You talked with Mr. Stunenberg about it, didn't you?

A. Yes, but he never told me entirely what was in it.

Q. Did he tell you that the Barber Lumber Company were going to carry him for a certain interest in the deal?

A. Yes, but I thought—that it was his equity; it was an equity that he had, or option, which arises very often in mining transactions, as I have seen it in the West, and it was something like this,—if he should repay to the Barber Lumber Company one-fourth say, of what that land in the Boise Basin

(Deposition of John Kinkaid.)

should cost, with interest thereon, and I think that they told him or he told me, that that would be six or seven per cent,—that he would be able to purchase it, and that was supposed to work out so that he would not have a great deal to pay as they were cutting timber and selling lumber.

Q. How much money did Mr. Sweet give you all together?

A. That I can't say any more than I have testified to, because the account was in the book that I lost in 1905.

Q. You endeavored to purchase all of the entries that had been made in the Boise Basin upon which proof had been made before you went to Thunder Mountain?

A. Not all of them; I endeavored to purchase a few of them, in fact, I didn't try very hard, because the first proposition I ran up against was that there was no final entry certificate issued.

Q. And when did you go to Thunder Mountain?

A. I left the 16th day of April, 1902; I returned the first day of June.

Q. And after your return did you buy all of the entries upon which final certificates were issued in the Boise Basin?

A. Oh, no, I don't think so, but I bought some running along there for a year or more, I bought something like 100 or 101 of them.

Q. How many had been made at that time?

A. I don't know.

Q. Did you buy approximately all?

(Deposition of John Kinkaid.)

A. I suppose so; I think likely that I bought the majority of them, but I certainly bought all that were made to Mr. Palmer at that time, except possibly one or two titles.

Q. You referred to taking second deeds at the suggestion of Governor Stunenberg, because counsel for some of the people he represented in Wisconsin, had suggested that the deeds that had been taken were defective in some particulars; and one of them was defective as to the consideration; wasn't any consideration mentioned in those deeds?

A. Yes, but the parties seemed to want a larger consideration when a smaller consideration was named. It touched their pride, and they wanted to sell for a large amount, and so some of the considerations were \$1.00 and some \$1,500 and some \$2,000.

Q. What was the objection, the amount of the consideration?

A. Yes, that they should express the exact amount that was paid.

Q. Did you take deeds from many men without their wives joining in the deeds?

A. I think some of the deeds were that kind, and that was one of the objections; I didn't know about their family affairs.

Q. Do you know how much money was paid you by Governor Stunenberg or Mr. Borah for the purchase of these properties, approximately all the property mentioned in this complaint?

A. Well, I can only compute that; there should have been \$800 paid for each claim.

(Deposition of John Kinkaid.)

Q. I mean 140 or 150 or 200 thousand?

A. I can't tell that.

Q. And all of the money that you received from them you deposited in the First National Bank?

A. Oh, no, not all money; most of that for the purchase of timber in the Boise Basin was made in currency, in cash, and there was a great deal of that given to me; I supposed it was kept in the bank and carried to me; there were some checks given to me, but it was mostly money.

Q. I notice here from this bank statement of the First National Bank that from November 6th, 1901, down to December 31st, 1904, you had deposited in that bank about \$141,000 and that on that date December 31st, 1904, your balance was \$83.33, now, did I understand you to say that during that time you had made some \$12,000 or \$15,000 out of these transactions?

A. No, I did not make—I really never made anything to amount to anything. I actually never made anything.

Q. Do you know how much money was actually paid you in commissions by Governor Stunenberg?

A. There is where the \$12,000 comes in, that was commission upon the Crooked River deal, and that was about \$12,000 that was paid me.

Q. And he paid you that in installments of about 11 or 12 or 13 installments?

A. I don't know how many, and as he paid me the amounts were divided between us, and he kept the account of it and so did I; it was an exact ac-

(Deposition of John Kinkaid.)

count.

Q. To whom did you sell the claim on which you located?

A. I sold that to Governor Stunenberg.

Q. Personally?

A. I made the deed, I suppose, to Mr. Palmer.

Q. And was that one of the first transactions that you had with him?

A. No, that was not; I don't know when I had that or anything about it, but I know that I wanted to hold the land, didn't think then that I would sell it at all, and the Governor got it one day when I needed the money.

Q. Where is this Mr. Bowen that you referred to?

A. Mr. Bowen is in New York, or Ohio.

Q. What is his first name?

A. His name is Samuel C. Bowen if he is alive, I haven't heard from him for several years.

Q. I understood you to say that the Barber people didn't employ Mr. Stunenberg to purchase the deeds in the Crooked River, that he was doing that to help them out, is that correct?

A. Well, what I said about that property doesn't signify; but what I understood was that they had nothing to do with the Boise Basin contract, the first contract that he had; they undoubtedly employed him.

Q. You got the commissions out of that also?

A. That is where I was going to make some money, yes. These three transactions were separate

(Deposition of John Kinkaid.)

and distinct, as possibly could be. During that time they took up a lot of scrip lands, but that was a matter I had nothing to do with.

Q. (By Mr. BUNDY.) They also bought a lot of land for millsite purposes, didn't they?

A. I heard that they did, but I had nothing to do with that.

Q. (By Mr. GORDON.) Was the first money that you received from Governor Stunenberg in any way connected with these transactions—I will ask you if you remember Mr. Stunenberg giving you a check in August, 1903, to pay Patrick Downs for a trip to Crooked river, a check for \$38?

A. He might have done so.

Q. Do you remember what transaction that was in?

A. No, I don't know anything about it, was that on a commission account?

Q. I don't think it was marked "commission." And then there is one for Patrick Downs to Crooked river to look up scrip.

A. Neither of those had anything to do with me, at least I don't know anything about those. He might have been in Boise and left such a check with me to hand it to Patrick Downs, to hunt him up and pay it to him.

Q. Now, the first check that you had from Mr. Stunenberg in connection with these timber claim collections I understand was June 7th, 1902, a check for \$2,500?

A. Whatever that may show; the first money I

(Deposition of John Kinkaid.)

remember was in currency that I had from him.

Q. This is a check that you had from him?

A. He might have given me a check, and whatever shows, why I undoubtedly had the check which was for the purpose of purchasing lands or payment for lands which I had purchased.

Q. And you gave back all of the money that either Mr. Sweet or Mr. Stunenberg had given you prior to that time without using any of it, is that correct?

A. Without using one dollar of it, because it was a trust fund for a certain purpose, and if I had wanted any of that money or needed any of it, I could have borrowed it of Mr. Sweet, or I could have gotten it elsewhere; I had money at that time. There is one matter about Norman H. Young, that Mr. Bundy asked me and I wish to say that Mr. Young gave two deeds, but the first was defective in some way; there was a second deed given from him because of the defective description of the deed; there was a quarter of a quarter left out, or something of that kind.

Q. Do you remember any of the persons that you tried to purchase from when you received that money from Mr. Sweet for the purpose of purchasing claims?

A. No, I don't remember now, because those names have become so familiar since, but I looked up some of those, or they looked me up; and some of them claimed that they had final certificates of entry, but when they went to get them they didn't have; I finally went to the land office and found that none of them had them.

(Deposition of John Kinkaid.)

Q. Did Mr. Sweet ever pay you anything for your services?

Q. You mean in trying to buy that land?

Q. Yes.

A. No, I didn't do anything, that is, I did not accomplish anything and I charged him nothing for it, and he would have done the like for me; he carried on transactions for me.

Q. Will you state when you met Mr. Palmer?

A. I can't say, but when he was there sometime, I presume I met him before I went to Thunder Mountain, I presume I did, but I don't remember the circumstances or anything about it except that I know this,—it was not in any other way than socially; he may have written that letter to me introducing Mr. Thornton.

Q. I have a number of checks here that I wish you would identify; I show you a check dated February 7th, 1902, to the order of John Kinkaid for \$2,150 signed "Frank Stunenberg, Agent," and endorsed "John Kinkaid," and I will ask you if that check was drawn by Frank Stunenberg and endorsed by you, and did you receive that amount of money on it?

A. Yes.

Q. I show you a check dated February 13th, 1903, to the First National Bank of Boise, \$4,000, signed "Frank Stunenberg, Agent, account Kinkaid," and ask you if that is Frank Stunenberg's signature to that?

A. Yes, that is Frank Stunenberg's signature, but it is not to me.

(Deposition of John Kinkaid.)

Q. Yes, it was deposited to your credit in the First National Bank. And I show you also a check on the Commercial Bank of Caldwell, March 25th, 1903, to the order of First National Bank, Boise, \$1,200 signed "Frank Stunenberg personal account Kinkaid," and I ask you if that was signed by Frank Stunenberg and placed to your credit?

A. That is signed by Frank Stunenberg personally, and it was likely passed to my credit, I don't know.

Mr. GORDON.—I offer these three checks in evidence.

Q. What was Mr. Borah to give you for each claim; I understood you to say that he had nothing definite with you, but he would settle with you?

A. He paid me \$200 or \$300 for the claims and services in buying the claims that I got when he was furnishing the money.

Q. Do you remember on November 6th, 1903, Governor Stunenberg gave you a check for \$2,000 in part payment for five claims on Crooked river, or an advance on five claims on Crooked river?

A. What date was that?

Q. November 6th, 1903.

A. No, I don't; that Crooked river transaction should have been very nearly closed up at that time, if not entirely so; if there was a check of that kind.

Mr. GORDON.—That is all.

It is hereby stipulated that the signatures of the witnesses John I. Wells, Louis M. Pritchard and John Kinkaid are hereby waived subject to the right

of either party to recall the witnesses at the expense of the defendant Barber Lumber Company for the purpose of correcting any errors which counsel for the respective parties are unable to correct by agreement.

State of California,
County of Los Angeles,—ss.

I, Cora E. Montgomery, a notary public in and for the County of Los Angeles, State of California, do hereby certify that the above and foregoing depositions of John I. Wells, Louis M. Pritchard and John Kinkaid, were taken before me on the 2d, 3d, 5th and 6th days of April, 1909, pursuant to stipulation of counsel for the respective parties above set forth; that such depositions were taken at the instance of the defendant Barber Lumber Company for use in the cause entitled United States of America, Complainant, versus Barber Lumber Company, and others, defendants, now pending in the Circuit Court of the United States for the District of Idaho; and that counsel for the respective parties waived the signature of the witnesses of their respective depositions by a stipulation set forth.

[Seal] CORA E. MONTGOMERY,
Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: Filed June 19, 1909. A. L. Richardson, Clerk.

In the Circuit Court for the District of Idaho.

UNITED STATES OF AMERICA,

Complainant,

vs.

BARBER LUMBER COMPANY et al.,

Defendants.

Appearances:

PEYTON GORDON, Esq., and CHARLES
KEIGWIN, Esq., Counsel for Complainant.

C. T. BUNDY, Esq., and R. P. WILCOX, Esq.,
Counsel for the Defendant, Barber Lumber
Company.

It is hereby stipulated and agreed, by and between the parties to the above-entitled action, by their respective counsel, that the depositions of James T. Barber, S. G. Moon, F. H. L. Cotten, and P. J. Cosgrove, may be taken in behalf of and at the request of the defendant Barber Lumber Company, before A. H. Shoemaker, Esq., a notary public in and for Eau Claire County, Wisconsin, without notice; and that such depositions may be taken in shorthand by the said A. H. Shoemaker and by him transcribed in longhand or on typewriter, and that the signature of the various witnesses thereto be waived, subject to the right of either party to recall such witnesses, at the expense of the Barber Lumber Company, to correct any errors therein, which errors cannot be corrected by agreement of the parties.

It is further stipulated, that such depositions

when taken, transcribed and filed with the clerk of the said court, shall have the same force and effect as if taken before the regularly appointed examiner of said court:

It is further stipulated, that the deposition of Dr. John Watson, taken before John J. Sly, a notary public at Buffalo, New York, when filed with the clerk of said court shall be used with the same force and effect as if said deposition had been taken before the duly appointed examiner of said court on due notice.

[Deposition of James T. Barber, on Behalf of the Defendants.]

JAMES T. BARBER, being first duly sworn, on oath, testified as follows, in answer to the following interrogatories put to him.

(By Mr. BUNDY.)

Q. Mr. Barber, you are the James T. Barber who is mentioned as a defendant in this action?

A. Yes, sir.

Q. In connection with the Barber Lumber Company, are you not? A. Yes, sir.

Q. What is your present age?

A. Sixty-two.

Q. And where do you reside?

A. City of Eau Claire, Wisconsin.

Q. And what is your business?

A. Lumber business.

Q. For how many years have you resided in Eau Claire? A. Twenty-three years.

Q. And where did you reside prior to that time?

A. Hannibal, Missouri.

(Deposition of James T. Barber.)

Q. Will you state, Mr. Barber, in your own way, your connection with the lumber business here and elsewhere, from the beginning up to date?

A. I have been advertised from *one of* the country to the other as a millionaire lumberman of Wisconsin. I would like to correct that impression so far as I can in connection with this case. I am not a millionaire lumberman. I am only interested in a comparatively small way in two local lumber companies. My entire holding of stock being less than three hundred shares, of a hundred dollars par value. I went to work for the Northwestern Lumber Company in 1875,—

Q. That is a Company of this city?

A. Yes, sir; that is the Company I am now connected with, as a bookkeeper.

Q. Go on Mr. Barber.

A. At Hannibal, Missouri. I continued in the employ of the Company in a subordinate position at Hannibal, until 1886. At that time I was permitted to buy a little of the stock of the Company on credit. At the end of the year 1886, the Northwestern Lumber Company closed its business operations in Missouri, and I was transferred to Eau Claire. I became the assistant of the then president, Mr. D. R. Moon, and was very closely associated with him until his death in 1898. I became very much attached to him, and after his death I felt very much like being of all the service I could to the widow and children, there being some five children here. Just wait a minute until I get the children right. How many

(Deposition of James T. Barber.)

children are there Jack? Seven children.

Q. At that time what position did you hold with the Northwestern Lumber Company, at the time that Mr. Moon died? A. I was vice-president.

Q. Who was president?

A. Mr. D. R. Moon. At the time Mr. Moon died, the other principal stockholder lived at Minneapolis.

Q. Mr. S. T. McKnight?

A. Yes, Mr. S. T. McKnight.

Q. Now, at or a short time prior to Mr. Moon's death what, if any, change was made in your relations with the Northwestern Lumber Company?

A. Prior to Mr. Moon's death?

Q. Yes; did you acquire some stock in the company at that time?

A. I acquired it before that; in 1886 I bought some stock on credit. After Mr. Moon's death the Northwestern Lumber Company found it necessary to begin curtailing its operations on account of the impossibility of obtaining the necessary supply of timber, and we began looking around for some operating plant in the west where a supply of timber could be secured and which would make a profitable use for the money left by Mr. Moon and possibly a profitable occupation for some of the boys.

Q. Now, with reference to looking up an operating plant, I will ask you as to whether you had any conversation with Mr. Carson or any other person connected or interested with you in this investigation?

A. Among the old pioneer concerns in this part

(Deposition of James T. Barber.)

of Wisconsin was the firm of Carson & Rand. Mr. Carson lived at Eau Galle, Wisconsin; afterwards, here in Eau Claire; and Mr. Rand lived at Burlington, Iowa. Mr. Carson's son, the Mr. Carson of the old firm of Carson & Rand; Mr. Carson was the father of the present William Carson and several daughters, among them, the wife of Mr. C. W. Lockwood, the treasurer of the Barber Lumber Company.

Q. Mr. William Carson is the present president of the Barber Lumber Company? A. Yes, sir.

Q. And Mr. Rand was the father of Horace S. Rand of Burlington, Iowa, who is also a stockholder in the Barber Lumber Company?

A. Yes, sir. In talking over plans for extending and continuing the lumber business for those of us who had been in it for many years, with Mr. Carson, he frequently expressed a desire or willingness, in the event we organized an operating, not a speculating plant, and we would take over the operations of it, to go in with us, join us in establishing that kind of an operation.

Q. Right there; I won't interrupt you very often, Mr. Barber; Mr. C. W. Lockwood and Mr. Carson both represented, did they not, the Carson estate which has been kept intact, has it not?

A. That is my information that the estate was incorporated. While Mr. Lockwood is a large stockholder in the Barber Lumber Company, both his and his—what I should say is that the individual holdings of Mr. Carson and Mr. Lockwood I know nothing about, but the impression prevails that it is

(Deposition of James T. Barber.)

the Carson estate.

Q. The present Horace S. Rand and the present William Carson have been intimately connected in various enterprises?

A. Yes, in Burlington, the same as their fathers were before them.

Q. Now, you have got up to the point, Mr. Barber, with reference to having some talk with Mr. Carson with reference to starting lumbering operations at some time, at some point in the west; I will ask you whether or not any definite place had been agreed upon in these talks with Mr. Carson?

A. None whatever. It was recognized, of course, that any large lumbering operations would necessarily be in the west, as there was no timber of any quantity to be obtained in this country.

Q. Before proceeding any further I want to take up these various defendants and others involved in this lawsuit; you know Albert E. Palmer?

A. Yes, sir.

Q. Just tell what he is and your connection with him prior to the timber operations in question.

A. Mr. Palmer came to work for the Northwestern Lumber Company; I can't give you the date.

Q. Here at Eau Claire?

A. Here at Eau Claire; but I should think it was sometime about 1890 or 1891 or 1892; I have not looked it up. Our records would, of course, show.

Q. In what capacity?

A. I think he started as an office boy; worked his way through the office force, became a bookkeeper

(Deposition of James T. Barber.)

and showed a great deal of ability. We always found him faithful and strictly honest, and he was in the employ of the Northwestern Lumber Company for quite a number of years.

Q. Where did he go when he left here at the time of the beginning of these operations in question?

A. He left the employ of the company and located at Spokane, Washington. He became a mining engineer and I have always understood, quite successful. He occasionally, in his mining operations would write us to know if we would take an interest in something of that kind. We wrote him that we were not looking for mining schemes at all, but if he ran across any good timber propositions, we would like to consider them.

Q. Do you recollect Mr. Palmer being here sometime in the summer of 1901 or latter part of 1901 with a mining proposition?

A. I remember he was here, and I think, with a mining proposition. It didn't interest me at all.

Q. Now, Mr. Barber, was Mr. Palmer hired by you to look up timber propositions, or just state what manner they came up?

A. We had no connection, no understanding, no arrangement with Mr. Palmer for doing anything for us other than as I said, we had written him that if he ran onto a good lumbering proposition, we would consider it.

Q. We will stop Mr. Palmer for the time being and take up Mr. Horace S. Rand, named as a defendant here; that is the Horace S. Rand you have

(Deposition of James T. Barber.)

told us about? A. Yes.

Q. Mr. Lockwood, who is mentioned as one of the incorporators of the Barber Lumber Company, is the same Mr. Lockwood who is a brother-in-law of Mr. Carson and holding the stock of the Carson estate? A. Yes, sir.

Q. And he is vice-president of the Eau Claire National Bank of this city? A. Yes, sir.

Q. And has resided here a good many years?

A. Yes, sir.

Q. A neighbor of yours? A. Yes, sir.

Q. And occupies the old Carson home in this city? A. Yes, sir.

Q. Mr. Sumner G. Moon is one of the sons of Mr. D. R. Moon who was formerly president of the Northwestern Lumber Company?

A. Yes, sir.

Q. And one of the defendants named in this action? A. Yes, sir.

Q. Did you ever know or see the defendant named William Sweet? A. Yes, sir.

Q. Where did you see him and when; just in a general way; I don't care to go into the particulars?

A. I met him at Boise, Idaho. I could not give you the year, but think it was in 1905 or 1906; 1906, I guess.

Q. Did you ever have any business transactions with him at that time? A. None whatever.

Q. Any business transactions with him at any time? A. None whatever.

Q. Had you met him prior to that time?

(Deposition of James T. Barber.)

A. No, sir; wait a minute; I am all mixed up in this transaction; I am off; absolutely off; I never met Mr. Sweet.

Q. Never had any business transactions with him whatever? A. No, sir.

By Mr. GORDON.—Who is the gentleman you confounded him with?

(No answer.)

(By Mr. BUNDY.)

Q. So you never met Mr. Sweet in your life?

A. Never met Mr. Sweet.

Q. The defendant Louis M. Pritchard, did you ever meet him? A. No, sir.

Q. Ever have any correspondence with him?

A. None whatever.

Q. Mr. John Kinkaid, a defendant in this action; did you ever meet him? A. Yes, sir.

Q. Is that the gentleman you referred to?

A. Yes, sir.

Q. Where did you meet him? About when?

A. Oh, I couldn't tell; I couldn't give the dates.

Q. Well, with reference to the time you bought out the interest of Mr. Sweet; was it before or after that? A. After; a long time.

Q. Did you ever have any business relations with Mr. Kinkaid? A. None whatever.

Q. Did you ever write any letters to him or receive any from him? A. No, sir.

Q. Did you have any business transactions with him with reference to timber lands in Idaho or elsewhere? A. No, sir.

(Deposition of James T. Barber.)

Q. Now, Patrick H. Downs; do you know Mr. Downs? A. Yes, sir.

Q. Did you ever have any business relations with him? A. No, sir.

Q. Did you ever have any correspondence with him or from him? A. No, sir.

Q. You may state briefly what your acquaintance with Mr. Downs consisted of.

A. I went to Idaho for the purpose of looking into the Barber Lumber Company's business and looking after timber lands, and Mr. Steunenberg had made arrangements for our convenience, it being necessary to drive all the way, and had secured the services of Mr. Downs as a driver and general pilot and guide to show us through the country.

Q. Can you tell approximately what year that was? A. That was in 1902.

Q. Before or after you had purchased Mr. Sweet's interest? A. After.

Q. Did you ever have any other business transactions with Mr. Downs other than riding in the team he drove? A. No, sir.

Q. Now there is named in the complaint, although not a defendant, Frank Steunenberg; you were introduced to him by whom?

A. By a letter from Mr. Palmer.

Q. Now, we will drop that for the time being; now there is one other party named, John I. Wells; did you ever meet him? A. Yes, once.

Q. Where did you meet him?

A. In Boise, Idaho.

(Deposition of James T. Barber.)

Q. Can you tell approximately what year?

A. I think it was in 1906.

Q. Prior to that time had you ever met the gentleman personally? A. No, sir.

Q. Did you at any time have any business relations with him? A. None whatever.

Q. Did you ever correspond with him or have any letters from him? A. No, sir.

Q. Now, Mr. Barber, prior to 1902, had you ever been in the State of Idaho, other than to go through it on the train? A. No, sir.

Q. Prior to 1902 had you any holdings or interests of any kind or character personally or otherwise in the State of Idaho, timbered portions?

A. Nothing other than an option to purchase some northern Idaho timber which I took from Governor Scofield; I think not.

Q. Were you in the State of Idaho at the time the option was taken? A. No, sir.

Q. Did the timber covered by the Scofield option extend in the Boise Basin? A. No, sir.

Q. How far from it?

A. Several hundred miles up in the Clear Water Country.

Q. The ex-governor Scofield you speak of was formerly the Governor of Wisconsin?

A. Yes, sir.

Q. With whom did you negotiate that option?

A. With Governor Scofield in Milwaukee.

Q. In this State? A. Yes, sir.

Q. That option was never exercised?

(Deposition of James T. Barber.)

A. No, sir.

Q. With the exception of holding an option on some of Governor Scofield's timber, had you personally or in a representative capacity, any timber holdings in the State of Idaho prior to the timber purchase from Sweet in 1902? A. No, sir.

Q. Had you any knowledge or information as to the existence of any timber in the Boise Basin or tributaries prior to 1902? A. No, sir.

Q. In your lumbering operations prior to the venture in Idaho, had you any experience, Mr. Barber, under the Stone and Timber Act, so-called?

A. No, sir; none whatever.

Q. Was the Stone and Timber Act ever in force in this State since you have been operating here?

A. Not to my knowledge.

Q. Did you ever acquire any lands in Idaho based upon the Stone and Timber Act? A. No, sir.

Q. During the early part, latter part of 1901, and the early part of 1902, I will ask you as to whether or not Mr. Palmer at various times brought to your attention timber propositions in the State of Idaho?

A. I remember only one proposition which was the Cameron Lumber Company located up on Coeur d'Alene Lake.

Q. Mr. Barber, calling your attention to this cabinet that is here in my office, lettered from A respectively down through the alphabet, I will ask you if that is the cabinet kept at your office containing the correspondence and files of the Barber Lumber Company? A. Yes, sir, it is.

(Deposition of James T. Barber.)

Q. And was sent down here for use in this trial at my request? A. Yes, sir.

Q. I will ask you, Mr. Palmer, if you did have correspondence with Mr. Palmer during the month of January and February and early part of 1902, in which he sought to interest you in the Cameron Lumber Company deal for one? And I think there is here one in another deal signed by W. C. Ufford and attached to it a letter from Mr. Palmer calling your attention to an opportunity to buy in?

A. Yes, sir.

Q. None of these lands have anything to do with the Barber Lumber Company's lands in the State?

A. Nothing whatever.

Q. And as a matter of fact, you turned down these propositions and had nothing to do with them?

A. No, sir.

Q. Now, Mr. Barber, I show you a letter marked in blue pencil 11½ and ask you if you know the handwriting of Albert E. Palmer, his signature, and if that is a letter from him?

A. I recognize the handwriting and signature of Mr. Palmer to the letter; it is a letter from him.

Q. Dated, February 21, 1902, and addressed to you at Eau Claire? A. Yes, sir.

By Mr. BUNDY.—I offer this letter in evidence and desire to read the parts that relate to the timber in controversy.

“Spokane, Washington, February 21, 1902.

J. T. Barber, Esq.,

Eau Claire, Wisconsin.

(Deposition of James T. Barber.)

Dear Mr. Barber: I mailed you to-day report Ex-governor Steunenberg, of Idaho, as sent to Mr. Campbell, Steunenberg will be here in a few days and Campbell is going to finance him because he has confidence in him. Campbell says if I want the deal he will turn the Governor over to me. He is no doubt a capable and reliable man. If you want to look into his scheme and will pay his expenses to Eau Claire and back, wire me, and I will have him go and see you. It is impossible for me to get anything desirable that does not require prompt action. If you do not wire me re this Steunenberg matter, the whole thing will be arranged here shortly after his arrival. His report explains itself. Mr. Campbell gave me this in confidence. If you want anything in Idaho these two propositions are worth your consideration.

Very truly,

A. E. PALMER.

P. S. I also enclose balance sheet Cameron Lumber Company. The timber charges shows the actual cost only.

A. E. PALMER.

Q. Mr. Barber, prior to the receipt of that letter, had you ever heard of any timber proposition in which Governor Steunenberg was interested?

A. No, sir.

Q. Had you ever known in any manner prior to this, of Governor Steunenberg's connection with any timber deal?

A. No, sir.

Q. Now, this letter refers to a report. Ex-gov-

(Deposition of James T. Barber.)

ernor Steunenbergh had sent to Campbell, have you made any effort to find that report and find where it is?

A. We have searched our office files and the whole office to find it, if possible.

Q. Have you any recollection what the report contained? A. No, sir.

Q. Do you remember in a general way what kind of a document it was; do you remember of seeing it?

A. No, sir.

Q. I will ask you as to whether or not you knew on receipt of this letter what timber it was, where it was located, that Governor Steunenbergh was interested in? A. No, sir.

Q. I show you another letter marked in blue pencil; you will have to keep your *specks* out right along; purporting to be sent by A. E. Palmer, from the files of the Barber Lumber Company; was that written and signed by Mr. Palmer?

A. It was.

Q. Was it addressed to and received by you?

A. It was.

By Mr. GORDON.—At or about that date? At or about that time, I assume, February 22, 1902?

A. Yes, sir.

By Mr. BUNDY.—I offer this letter in evidence and reads as follows:

“Spokane, Washington, February 22d, 1902.

J. T. Barber, Esq.,

Eau Claire, Wisconsin.

Dear Mr. Barber: About thirty thousand dollars’

(Deposition of James T. Barber.)

worth of timber has already been bought under Governor Steunenberg's plan and Mr. Campbell will likely make a pool of one hundred thousand dollars more to back the Governor, but he says I can have his place if I want it. Steunenberg wants to be carried for an interest, but I suppose you could have the whole deal after it is completed for a consideration. In the meantime Steunenberg's assistance would be worth a great deal to you.

Very truly yours,

A. E. PALMER."

By Mr. BUNDY.—I show you a letter-press copy book marked N. W. L. Co., Eau Claire, Wis., E, and at the bottom, "J. T. Barber" and ask you if that is a book kept by the Northwestern Lumber Company in the regular course of business, in which copies of correspondence was kept or supposed to be kept?

A. Yes, sir, it is such a book.

Q. I show you on page 567 of that book, a telegram copied, addressed to A. E. Palmer, of date, February 26, and ask you if you sent Mr. Palmer such a telegram in response to the two letters that have been offered in evidence? A. I did.

Q. We offer this in evidence.

"Eau Claire, February 26, 1902.

A. E. Palmer, Spokane, Washington.

Have Steunenberg come to Eau Claire at our expense. Answer.

J. T. BARBER."

Q. I show you two letters, marked number 14 and 15; particularly letter number 15 and ask you if

(Deposition of James T. Barber.)

that is a letter you received from Mr. Palmer at or about the date shown? A. Yes, sir.

Q. We offer the latter in evidence, number fifteen, which reads as follows:

“Spokane, Washington, February 27, 1902.

J. T. Barber,

Eau Claire, Wisconsin.

Dear Mr. Barber: Governor Steunenberg should reach Boise tonight when he should receive Mr. Campbell's wire asking him to return here preparatory to going to Eau Claire. Steunenberg put \$7500. into this deal since I wrote you, and Mr. Campbell let him have \$15000.00 more. I have no doubt but that he will come and see you.

Very truly,

A. E. PALMER.”

Q. I show you telegram on page 572; I show you letter-press copy of telegram in the letter-press book, and ask you if that is a telegram you sent to Mr. Palmer or a copy of one at or about that time?

A. Yes, sir.

Q. We offer it in evidence. It reads as follows:

“Eau Claire, Wisconsin, March 1, 1902.

A. E. Palmer, Spokane, Washington.

We have Scofield property option. Don't want Cameron. Time Too short. Get us out the best you can. We will not see you lose. Let Steunenberg come here.”

Q. I show you a telegram from files of Company marked No. 17; is that a telegram received from Mr.

(Deposition of James T. Barber.)

Palmer about the date shown? A. Yes, sir.

By Mr. BUNDY.—That is offered in evidence.

“Spokane, Washington, March 1, 1902.

J. T. Barber, Eau Claire.

Cameron has option on all the N. P. lands tributary to Coeur d'Alene lake, Increases stumpage two millions. Option goes with Cameron deal. N. P. option strictly private. Do you still decline? Steunenberg here tomorrow.

A. E. PALMER.”

Q. Will you please explain what was meant by telegram No. 17 just offered in evidence? Particularly with reference to saying you would not see him lose?

A. Mr. Palmer was so imbued with the idea that the purchase of the Cameron Lumber Company was a good one, that he took in his own name, without consulting us, an option on the property, and paid, I think it was \$250.00 or \$300.00 for an option; and in turning it down we felt that he being enthusiastic in both services for us and putting up his own money, we would not see him lose anything, but we declined it.

Q. Nothing ever come of it? A. No, sir.

Q. I show you a telegram taken from the files, dated sometime in March and on which there is a stamp marked “Answered, March 1, 1902” and “Received, March 1, 1902,” and ask you if that is a telegram received from Mr. Palmer on that day?

A. Yes, sir.

(Deposition of James T. Barber.)

By Mr. BUNDY.—I offer No. 18 in evidence which reads as follows:

“Spokane, Washington.

J. T. Barber, Eau Claire, Wisconsin.

Steunenberg left for Boise this morning. Campbell wired him come back. Should leave here Sunday.

A. E. PALMER.”

Q. Now, I show you a letter taken from the files, No. 22, and ask you if that is a letter received by you on March 6, 1902, from A. E. Palmer?

A. Yes, sir.

By Mr. BUNDY.—I offer the latter in evidence which reads as follows:

“Spokane, Washington, March 2, 1902.

J. T. Barber,

Eau Claire, Wisconsin.

Dear Mr. Barber: This will introduce to you Ex-governor Steunenberg of Idaho. You are already familiar with the object of his visit. He will explain details to you. There is no commission for anybody.

Very truly,

A. E. PALMER.”

Stamped with rubber stamp as follows: “Received March 6, 1902.”

Q. Mr. Barber is that stamp mark a method employed in your office to indicate the date on which letters are received? A. Yes, sir.

Q. And from that stamp mark you can tell when Mr. Steunenberg arrived here and presented that let-

(Deposition of James T. Barber.)

ter? A. We received the letter March 6, 1902.

Q. And was presented to you personally by Ex-governor Steunenbergs was it not?

A. Yes, sir.

Q. Up to that time, March 6, 1902, had you ever met Governor Steunenbergs? A. No, sir.

Q. Had you had any relations with him, or have any negotiations with him other than as shown by the correspondence between you and Mr. Palmer which is shown in evidence here?

A. None whatever.

Q. I show you a letter marked 23, taken from the files of the Company, and ask you if you received that letter on March 6, 1902?

A. Yes, sir.

By Mr. BUNDY.—We offer that letter in evidence.

“Spokane, Washington, March 2, 1902.

J. T. Barber,

Eau Claire, Wisconsin.

Dear Mr. Barber: Governor Steunenbergs leaves tonight for Eau Claire. Wish you would show him a little attention as he is quite a man. Mr. Campbell says he does not want anything out of the deal if you go into it, so there are no commissions to pay. Steunenbergs is familiar with the Scofield timber.

Think I will retain my option on the Cameron Lumber Company’s and interest somebody else in it.

Very truly,

A. E. PALMER.”

(Deposition of James T. Barber.)

Q. This letter 23 was evidently sent by mail to you and the other was presented by the Governor?

A. Yes, sir.

Q. Dated March 2d, received March 6th; now, Mr. Barber, we have traced this thing up to the time Mr. Steunenberg arrived at Eau Claire, on March 6th, and it appears he was to state the details of his proposition to you on his arriving; will you now state fully and in your own way, the proposition Mr. Steunenberg brought to you, representations he made, etc., going into it fully.

A. He stated that there was a tract of twenty-five thousand acres more or less of good timber in what was known as the Boise Basin, and that he, together with a person by the name of Sweet, had conceived the idea of establishing a lumber proposition; that timber and stone entrymen had made filings on quite a large amount of timber, made their final payments, and had final receiver's receipts, and that he and his partner had purchased several thousand acres of these lands; that numerous other filings had been made which Governor Steunenberg was satisfied could be purchased when the titles were perfected. We knew nothing about this timber and stone business, the legal situation of the timber and stone entrymen and we referred Mr. Steunenberg to our attorney, Mr. T. F. Frawley.

Q. Tell who Mr. Frawley was and his connection with this firm.

A. Mr. Frawley was the Northwestern Lumber Company's attorney, was connected with the firm,

(Deposition of James T. Barber.)

senior partner, of Frawley, Bundy and Wilcox, at that time. He has since died.

Q. Died June 30th, 1902?

A. Since this business. Mr. Steunenberg went on to state that his partner, Mr. Sweet, could not or would not furnish a sufficient amount of money to purchase the entire twenty-five thousand acres, and that any other smaller holding could not be profitably developed. He said that Mr. Sweet was willing to sell out on the basis of receiving the money back which he had paid for the lands purchased and incidental expenses, and fifty per cent profit. Up to this time we had always considered that in obtaining timber from the Government it was necessary in order to secure any quantity of it, to secure what is known commonly as "Lieu Lands Scrip." Now this is not scrip at all. It is the result of a provision of the law which enables the owner of land within the borders of a legally declared forest reserve to deed his land within the borders to the Government, and the Government in turn gives him the right to select any other Government lands in lieu thereof. It is simply a right to purchase land from the Government. At that time lieu land scrip as it was called, was worth from \$4.50 to \$5.50 an acre. We figured the thing over very carefully and we reached the conclusion that we could afford to pay Mr. Sweet his profit of 50%, purchase the additional filings when perfected, which Governor Steunenberg said could be done for about \$800.00 a claim, and bring the entire tract of about twenty-five thousand acres to a cost

(Deposition of James T. Barber.)

to us of about six dollars an acre, and as Governor Steunenberg had stated to us the land carried at least ten thousand to the acre, and it looked a good trade. Mr. Steunenberg came down here to Mr. Frawley's office.

Q. Before you leave that subject, Mr. Barber, now they had already several thousand acres and there were several thousand they could get, could buy; how did Governor Steunenberg plan to acquire the balance of the acres that he spoke of?

A. I should have mentioned that. He proposed that after purchasing from Sweet the lands he had already secured and purchasing from the entrymen the other lands already filed upon which the Governor said he could purchase when their filings were perfected, we propose to use our Lieu Land scrip on the basis of the prices per acre that I named for the rest of the land, and in that way we reached the result of not to exceed six dollars an acre. Mr. Frawley advised the Steunenberg and Sweet purchases of the timber and stone entries were all right, and we closed an arrangement or made a contract with Governor Steunenberg whereby he agreed to furnish us with twenty-five thousand acres of this land at not exceeding six dollars an acre.

Q. This contract being prepared, you wrote—

A. I will come to that in a minute. On the 12th of March during the negotiations or talk with Governor Steunenberg I had wired Mr. Palmer asking him if he would act as treasurer or auditor to check over the titles and purchases of Sweet and after-

(Deposition of James T. Barber.)

wards of Steunenberg, and handle our money for us in the event we made the trade. Mr. Palmer wired back that he would. The contract was drawn up ready for execution in the event Mr. Palmer found, on investigation, that the representations made were correct. On March the 12th, I took a train for the east on a vacation and was taken sick at Old Point Comfort and didn't get back until the first of May, and practically settled any of the detail that I had to do with that part of the business.

Q. Mr. Barber, do you recollect that Mr. Steunenberg left here on the sixth and do you recall that he left here and went to Chicago for the purpose of making arrangements with Sweet if possible, and then returned here again?

A. He went to Chicago after having had the first talk with us for the purpose of seeing or meeting Sweet, and then returned on the 12th from Chicago.

Q. That contract that you had agreed upon was not finally signed until the time when Mr. Palmer, acting as you have stated, as auditor, had looked over and approved the proposition?

A. It was not executed until that time; it may have been signed, but was not delivered to Steunenberg; we were holding the contract; I don't remember about that. There is one thing I should have possibly said, that is, that this contract and all the correspondence was with Barber and Moon, the Barber Lumber Company not having been considered at that time. And after this contract was delivered and Mr. Palmer had made his investigations, the

(Deposition of James T. Barber.)

whole plan was shown to Mr. William Carson and he signified his intention or willingness to join us in making the purchase.

Q. I show you letter-press copy of telegram on page 586 of the Northwestern Lumber Company's book, and ask you if that is a telegram you sent while Governor Steunenberg was here and during the negotiations with him? A. Yes, sir, it is.

By Mr. BUNDY.—We offer that in evidence, being number 26:

“Eau Claire, March 7, 1902.

A. E. Palmer, Spokane, Washington.

Will you serve as treasurer of corporation to develop Steunenberg scheme and be responsible for proper application of funds?

J. T. BARBER.”

Q. I show you telegram marked 27, from the files of the company and ask you if you received that in response to the telegram just read?

A. Yes.

By Mr. BUNDY.—I offer number 27 in evidence.

“Spokane, Washington, March 7, 1902.

J. T. Barber, Eau Claire, Wisconsin.

Yes.

A. E. PALMER.”

Q. That telegram was received by you, as indicated by mark, March 7, 1902?

A. Yes, same as date.

Q. Do you recall that during the negotiations with Mr. Steunenberg here at Eau Claire the question arose as to the practicability of driving that

(Deposition of James T. Barber.)

stream out there? A. Yes, sir.

Q. I will ask you as to whether or not you telegraphed Mr. Palmer with reference to that, on that same date, March 7th? A. Yes, sir.

Q. And is the telegram on page 588 of the letter-press book a copy of the telegram so sent?

A. Yes, sir.

By Mr. BUNDY.—We offer that telegram in evidence:

“Eau Claire, Wisconsin, March 7, 1902.

A. E. Palmer, Spokane, Washington.

Have trustworthy man ascertain if logs can be driven in large quantities from junction of Moores and Grimes creeks to Boise. Answer.

J. T. BARBER.”

Q. Was that telegram sent, Mr. Barber, for the purpose of proving or verifying some representations of Mr. Steunenberg as to the stream?

A. Yes, sir. Governor Steunenberg said that logs had been driven from the junction of Moores and Grimes Creeks which is at the edge of the basin.

Q. And so your decision to close the contract with Governor Steunenberg in a measure depended upon the drivability of the stream?

A. That cut quite a good deal of figure; if the timber was unavailable except by the construction of a railroad, it was practically valueless at that time.

Q. I show you a telegram number 29 and ask you if that is a telegram received by you from Mr. Palmer in response to telegram just read?

A. It is.

(Deposition of James T. Barber.)

By Mr. BUNDY.—We offer that in evidence:

“Spokane, Washington, March 7, 1902.

J. T. Barber, Eau Claire, Wisconsin.

Jim Maloney is here. Shall I send him to report on creeks?

A. E. PALMER.”

Q. Jim Maloney was a cruiser and timber man who lived in this part of the country?

A. Yes, he lived here, and I suppose he does now.

Q. Was Mr. Maloney out in that country in your interest? A. No, sir.

Q. Was he employed by you in any capacity?

A. No, sir. If you will bring out the relevancy of it I will say why.

Q. Mr. Maloney was an old timber cruiser around this country?

A. Yes, sir; estimator and cruiser that everybody in the business knew. Palmer knew I would know about who Maloney was as soon as he mentioned it.

Q. I show you letter-press copy of letter written by you to Palmer, page 589; that is a copy of a letter written and mailed by you at or about that time, is it? A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence.

“Eau Claire, March 7, 1902.

A. E. Palmer, Spokane, Washington.

Dear Sir: Governor Steunenberg has been here for a couple of days and has gone on to Chicago to meet a Mr. Sweet who seems to have quite a large interest in the scheme the Governor is promoting. This proposition looks very fascinating to us and

(Deposition of James T. Barber.)

seems to hinge very largely on two vital questions. First. Can logs be transported at reasonable cost in large quantities from stump to Boise; and Second. Can we secure some local representative who will watch our interests and see that the money furnished by us is honestly applied to the purchase of good title to lands bearing timber as represented?

With this latter end in view, we wired you today as follows, 'Will you serve as treasurer of corporation to develop Steunenberg scheme and be responsible for proper application of funds.' We took this action after ascertaining that you have not yet arrived in St. Paul. Of course, if you are on your way east this correspondence is of no force.

Yours very truly,

J. T. BARBER, V. P.

Since writing above we have your answer 'Yes.' We know this is a nuisance to you and we certainly shall not expect you to help us without suitable compensation. We feel sure we can arrange to relieve you when we get the scheme to working if it goes through.

J. T. B."

Q. Did Mr. Palmer have any interest in the proposed contract you were discussing at that time, as an interested party? A. No, sir.

Q. Was Mr. Palmer a salaried man of you or Mr. Moon or the Northwestern Lumber Company, at that time? A. No, sir.

Q. Did you have any relations with him at all, Mr. Barber, except that you were drawing on him

(Deposition of James T. Barber.)

as a friend for services for which you expected to compensate him? A. No, sir.

Q. Was there any way to compensate him except as shown by that letter? A. No, sir.

Q. I mean at that time?

A. No, not at that time. I so understood the question.

Q. Now, Mr. Barber, Mr. Palmer was under some obligations to you people or Mr. Moon about mining ventures at that time?

A. I don't know anything about that; I had no interest in his mines; I knew nothing about them.

Q. I now show you a telegram from the letterpress copy book, dated March 8, No. 29 $\frac{1}{2}$; is that a copy of a telegram sent by you in response to inquiry made about Maloney? A. Yes, sir.

By Mr. BUNDY.—We offer that telegram in evidence, which reads as follows:

“Eau Claire, March 8, 1902.

A. E. Palmer,

Spokane, Washington.

Don't like Maloney, but presume action necessary.
Do best you can.

J. T. BARBER.”

Q. I now show you telegram, marked 31; is that a telegram received by you from Palmer at or about that time? A. Yes, sir.

By Mr. BUNDY.—We offer it in evidence. It reads as follows:

(Deposition of James T. Barber.)

“Spokane, Washington, March 8, 1902.

J. T. Barber,

Eau Claire, Wisconsin.

Moore's Creek all right; Grimes creek drivable about three miles from mouth.

A. E. PALMER.”

Q. Go on and state what was meant by driving in this correspondence and why you wanted to find out about it.

A. Of course, the very cheapest way to drive saw logs, bring saw-logs from the timber to the sawmill, if the streams running in that direction are sufficiently large and under sufficient control as to water supply, is to float the saw-logs. The process of putting the saw-logs into the river when the water is at the right stage, putting the logs afloat, and floating them with the assistance of a large crew of men, about the river, is called, in the trade, driving saw-logs.

Q. Now, I show you a telegram marked 32; was that telegram received by you from Mr. Palmer?

A. Yes.

By Mr. BUNDY.—I offer it in evidence.

Spokane, Washington, March 8.

J. T. Barber,

Eau Claire, Wis.

Reputable party wires me large quantities have been driven down Moore's creek annually.

A. E. PALMER.”

Q. I now show you a telegram or two telegrams, marked respectively 33 and 34, and ask you if these

(Deposition of James T. Barber.)

are telegrams received by you from Mr. Palmer at or about the time of their date? A. Yes, sir.

By Mr. BUNDY.—Number 33 reads as follows:

“Spokane, Washington, March 8, 1902.

J. T. Barber,

Eau Claire, Wis.

Too little water Grimes creek; think Moore’s creek supply ample. Mail reliable information tonight; unnecessary me go Boise.

A. E. PALMER.”

Number 34 reads as follows:

“Spokane, Washington, March 8, 1902.

J. T. Barber,

Eau Claire, Wis.

I will leave Boise tomorrow night; will wire you as soon as possible.

A. E. PALMER.”

Q. I now show you a letter in the letter-press copy book, on page 600, being number 35; is that a copy of a letter you wrote Mr. Palmer on that date?

A. Yes, sir.

By Mr. BUNDY.—I offer that letter in evidence, which reads as follows:

“Eau Claire, March 8, 1902.

A. E. Palmer,

Spokane, Washington.

Dear Sir: In the last twenty-four hours our suspicions have been aroused that other parties are attempting to forestall Governor Steunenberg in obtaining the timber in the Boise Basin, and in order

(Deposition of James T. Barber.)

to protect him and possibly handle the situation ourselves, we have been trying to do business by telegraph. Hence, the dispatch to you asking you to send somebody who could be trusted to investigate the question of driving thirty to fifty millions of saw-logs per annum from the junction of Moore's and Grimes Creeks to Boise. Your reply came promptly that you could send Mr. Maloney of this city. We have wired you that prompt action being necessary for you to do the best you could.

We have heard nothing from the Governor who went to Chicago to meet his partner, Mr. Sweet.

J. T. BARBER."

Q. Now, from that letter, Mr. Barber, refreshing your recollection, can you state as to how long Mr. Steunenberg was here after his arrival on the 6th day of March?

A. Why, he was here the two days, the sixth and seventh, as I recollect it; and then went to Chicago the night of the seventh.

Q. To meet Mr. Sweet?

A. To meet Mr. Sweet.

Q. On page 601 I show you copy of telegram from yourself to Steunenberg; is that a copy of a message sent by you to him on that day? A. Yes, sir.

By Mr. BUNDY.—I offer that in evidence.

"Eau Claire, Wis. March 10, 1902.

Frank Steunenberg,

Ontario Hotel, Chicago, Ill.

When will you be here. We advise prompt action.

J. T. BARBER."

(Deposition of James T. Barber.)

Q. Now, in response to that telegram, he came back from Chicago here, did he not?

A. Yes, sir.

Q. And before you left here, and before he left here for good, the details of an arrangement between you and Mr. Moon, on the one part, and Mr. Steunenberg on the other part, was agreed upon at least, was it not?

A. Yes, sir.

Q. And this contract was finally signed and delivered and became operative after Mr. Palmer had made the investigation which he subsequently did make?

A. Yes, sir.

Q. I show you paper marked "Steunenberg Contract" purporting to be signed by Frank Steunenberg, J. T. Barber and S. G. Moon; what is the date of that?

A. March 12, 1902.

Q. That is the signature of the respective parties?

A. Yes, sir.

Q. And that is the contract you agreed upon when Mr. Steunenberg was here?

A. Yes, sir.

Q. And it was signed and became operative some time later?

A. Yes, sir.

By Mr. BUNDY.—We offer that contract in evidence. The contract reads as follows:

WHEREAS, Frank Steunenberg of the state of Idaho, hereinafter named party of the first part, has and does hereby represent to James T. Barber and S. G. Moon of the City of Eau Claire, Wisconsin, hereinafter named parties of the second part:

First: That there are situate along and adjacent to Grimes Creek and Moores Creek, in what is known

(Deposition of James T. Barber.)

as the Boise Basin in the southern part of Boise County in the State of Idaho, many thousands of acres of timber lands, upon which is standing and growing pine and fir timber which will average at least ten thousand feet of board measure to the acre, eight thousand feet of which is pine. That said lands are so situate that the said timber thereon may be practically handled and with great profit in logging and manufacturing the same into lumber, and that the title to said lands may be obtained within the next six months at a price not exceeding five and one-half dollars an acre.

Second: That heretofore the said party of the first part and one Sweet entered into, and now are engaged in the enterprise and venture of exploring said lands and obtaining title thereto, and have perfected the title to certain of said lands, and have invested therein a large sum of money. That the amount so advanced by said Sweet in furthering such enterprise and venture is substantially twenty-two thousand dollars (\$22,000). That the party of the first part and said Sweet are willing and desirous that said Sweet should assign and transfer all of his right, title and interest in and to the enterprise aforesaid, and in and to the lands and title thereto, so by him acquired therein, either separately or jointly with said party of the first part to said parties of the second part, for the amount by him actually invested therein, together with a profit or fifty per cent of the amount of said investment.

Third: That in the event that said parties of the

(Deposition of James T. Barber.)

second part purchase and acquire the interest of said Sweet in the enterprise aforesaid, and pay him therefor the amount of his actual investment, together with an addition of fifty per cent thereof, the said party of the first part can, and will acquire, by good and perfect title and have vested in the said parties of the second part, within six months from the date hereof, twenty-five thousand acres of land, with at least two hundred million feet, board measure, of merchantable pine and fir timber standing and growing thereon, of which timber at least eighty per cent is pine, in substantially a compact form, along and adjacent to the creeks aforesaid, and so situate as to be available for use in manufacture into lumber; the total price of said twenty-five thousand acres in the aggregate not to exceed the sum of one hundred and forty thousand dollars. And

WHEREAS, the said party of the first part is desirous of becoming and being interested in said lands and timber aforesaid, or in the stock of a corporation which may hereafter be organized to own, handle and control the said lands and timber aforesaid, and is willing and desirous of giving his best time and effort to procure the title to said lands to be vested in the parties of the second part, at the lowest and best attainable prices; and the said parties of the second part being willing to enter into an arrangement and agreement upon the representations aforesaid, the said parties hereto, for and in consideration of the benefit to accrue to each therefrom, and in consideration of the mutual agreements herein made, and for

(Deposition of James T. Barber.)

the sum of one dollar each to the other in hand paid, the receipt whereof is hereby acknowledged, have agreed, and do hereby agree, as follows:

First: That said party of the first part shall and will immediately procure, by good and sufficient conveyance, an assignment and transfer of all the right, title, interest and ownership of said Sweet in and to the venture and enterprise aforesaid, and due and sufficient conveyance of said lands and real estate aforesaid, to said parties of the second part for the actual and bona fide investment of said Sweet therein, together with a profit of an additional fifty per cent thereon, and which investment, at this time, said party of the first part agrees and undertakes, does not exceed the sum of twenty-two thousand dollars and the whole amount to be paid to said Sweet therefor not to exceed the sum of thirty-three thousand dollars; the precise and actual amount of said Sweet's investment in such venture and enterprise aforesaid to be vouched for, determined and audited by A. E. Palmer, of Spokane, State of Washington.

Second: Said party of the first part has agreed and does hereby agree that he will immediately select and locate said lands, so timbered as aforesaid and so situate upon said Grimes and Moore Creeks aforesaid, and shall and will cause good, perfect, indefeasible titles thereto to be vested in said parties of the second part and shall and will, within six months from this date, have so vested in said parties of the second part the title, so good, perfect, indefeasible as aforesaid, of at least twenty-five thousand acres

(Deposition of James T. Barber.)

of said lands, with at least two hundred million feet of standing merchantable pine and fir timber standing and situate thereon, of which timber at least eighty per cent thereof shall be pine, and the price thereof and to be paid therefor shall be the actual cost thereof, and shall not in any instance exceed six and one-half dollars an acre, and not to exceed in the aggregate one hundred and forty thousand dollars.

Third: The said party of the first part does hereby covenant and agree that the title of all lands acquired hereunder shall be good, perfect, and inalienable where such title is or may be derived, or obtained from any person or source other than that acquired by or through the location of government scrip.

Fourth: And the said party of the first part does hereby promise and agree to pay to said party of the second part, on or before seven years from the date hereof, an amount, which with the sum heretofore advanced or which may *hereafter advanced* by him, shall amount to one-fourth of the total investment made hereunder, with interest at the rate of six per cent per annum, payable annually, on said sum so advanced by said parties of the second part for the party of the first part in pursuance hereof, such interest at the end of each year to be added and become part of the principal and bear interest at the rate aforesaid, provided that in the event that the property to be acquired hereunder shall be sold and disposed of by the parties hereto on or before the seven

(Deposition of James T. Barber.)

years aforesaid, then from the amount received upon such sale the parties of the second part may and shall retain the amount so owing them by said party of the first part with interest as aforesaid.

Fifth: Said parties of the second part agree that they will pay and advance the purchase price of the interest of said Sweet in and to said enterprise and venture aforesaid, which shall be the actual and bona fide investment of said Sweet therein, together with fifty per cent of said investment, and which amount shall be vouched for, ascertained and audited in and by said Palmer, as hereinbefore provided, and as and when all the right, title, interest and ownership of said Sweet in and to the venture and enterprise aforesaid and all his right, title and interest in said lands aforesaid, shall be deemed vested by good and sufficient conveyance in said parties of the second part.

Sixth: Said parties of the second part further agree that they will from time to time, as and when required, advance the necessary funds to purchase government scrip with which to obtain title to said lands and will, from time to time as and when required, upon the proper voucher being made therefor by said A. E. Palmer aforesaid, advance the necessary funds to acquire title to certain of said lands from other persons than the United States; provided that no funds shall be advanced herein except for actual investment in said lands and obtaining title thereto in the names of the said parties of the second part and that none of said lands, so acquired hereunder, shall cost to exceed six and a half dollars

(Deposition of James T. Barber.)

an acre and the whole of said purchase price, of the amount of twenty-five thousand acres, so timbered as aforesaid, shall not exceed in the aggregate, the sum of one hundred and forty thousand dollars.

Seventh: Said parties of the second part further agree that they will, when title is obtained hereunder to twenty-five thousand acres of said pine timber lands aforesaid, and may, at their option at any time prior thereto, cause a corporation to be organized under the laws of the State of Wisconsin with a capital stock which shall equal to the investment made in pursuance hereof in acquiring title to said lands, and they shall cause the title to all of said lands, so acquired hereunder to be duly vested in said corporation. They shall cause one fourth of the stock issued by said corporation to be set aside as the property, and for the benefit of said party of the first part, but to be held as collateral security by said parties of the second part for the moneys advanced hereunder for the benefit of said party of the first part, with interest as herein provided, and as security for all liabilities and agreements herein made and assumed by said party of the first part to said parties of the second part and for all liability and indebtedness of said party of the first part to such corporation.

Eighth: It is mutually understood and agreed by and between the parties hereto that in the event that the parties hereto shall not acquire under the terms of this contract, at least twenty-five thousand acres of land, with at least two hundred million feet of

(Deposition of James T. Barber.)

standing timber thereon as aforesaid, situate in said territory, within six months from this date, then the parties of the second part may, at their option, sell and dispose of all of the lands acquired by them in pursuance hereof, after giving the said parties of the first part six months' notice of their intention so to do, at the best and highest price that they may be able to receive therefor, keeping and retaining out of the moneys so received the whole of the moneys which they shall advance hereunder together with interest thereon on the several sums as and when advanced, at the rate of six per cent per annum, together with such other sums and amounts as may by said party of the first part be owing to said parties of the second part or to said corporation so to be formed as herein provided; and after paying such sum so advanced with interest as aforesaid if a sufficient sum be realized they shall pay to the party of the first part the amount which he has heretofore invested herein and which sum he may hereafter invest, together with interest thereon at the rate of six per cent per annum and in the event that there shall be any excess then three-fourths thereof shall be retained by the parties of the second part and one-fourth thereof to be paid unto said party of the first part.

Ninth: It is mutually understood and agreed by and between the parties hereto that in the event that the owners of the majority of the stock in said corporation shall determine to make improvements for the logging and handling of said timber, and to provide facilities for the manufacture thereof and addi-

(Deposition of James T. Barber.)

Additional funds be necessary therefor, then it shall be competent and proper for said corporation to do such things and the parties of the second part may, at their option, advance the money therefor as a loan or otherwise to said corporation, or may increase the capital stock of said company, as they may deem advisable, but in the event of so procuring such money for such extensions and additions to said business by increasing the capital stock in said company, the party of the first part shall have no interest in such additional stock, so to be issued, except that he may purchase the same at the time of the increase of such capital at the price paid by the other stockholders therefor, provided that at said time he shall have fully paid said parties of the second part all sums and amounts by him owing, or which he may owe to them or to said corporation at said time.

It is mutually understood and agreed by and between the parties hereto that all dividends may be declared by said corporation upon the stock of said party of the first part shall be applied in the payment of interest and principal of the amount which he may be indebted to said parties of the second part for loans and advances made to him, as herein provided and for such sums and amounts, as at the time of the declaring of any dividends may by him be owing to said parties of the second part, or to said corporation so to be formed as aforesaid.

It is mutually understood and agreed by and between the parties hereto that none of said parties shall have or receive any compensation for any work,

(Deposition of James T. Barber.)

labor or service, by either or any of them done or performed in acquiring title to any of the lands or real estate aforesaid.

It is further mutually understood and agreed, by and between the parties hereto, that said party of the first part shall not have or receive any pay or compensation for services heretofore rendered by him in advancing the venture and enterprise, as aforesaid, but he shall receive credit for the actual and bona fide sums and amounts heretofore, or which may hereafter be by him advanced in furthering such enterprise and venture, and which amounts, so heretofore by him advanced shall be ascertained and determined and vouched for by said A. E. Palmer, aforesaid.

It is further mutually understood and agreed that said parties of the second part shall, at their own cost and expense, pay for all services and expenses which may accrue to, or be owing to said Palmer for the performance of the services by him to be rendered as herein provided.

This agreement shall inure to and be binding upon the parties hereto, their heirs, executors, administrators and assigns.

IN WITNESS WHEREOF, the said parties hereto have interchangeably set their hands and seals this 12th day of March, 1902.

FRANK STEUNENBERG. [Seal]

JAMES T. BARBER. [Seal]

S. G. MOON. [Seal]

In presence of

_____.

(Deposition of James T. Barber.)

Q. That contract appears to be dated on the 12th day of March, 1902, Mr. Barber? A. Yes, sir.

Q. Now, that is the time you say you left on your vacation? A. Yes, sir.

Q. And took no further part in this matter until your return? A. No, sir.

Q. Until sometime in May; about the 1st of May, 1902, I think? A. Yes, sir.

Q. I ask you, Mr. Barber, if the arrangements you made with Mr. Steunenberg, and the contract as you construed it and understood it, contemplated the acquiring of the lands in the Boise Basin by the use of scrip other than the lands which had already been filed upon by the timber and stone entrymen at the time he was here?

A. That was the plan; yes, sir.

Q. Did you immediately upon the making of this contract, begin accumulating scrip for that purpose?

A. Yes, sir.

Q. Did you acquire scrip for that purpose?

A. Yes, sir.

Q. Do you know certain lands that were acquired by the Barber Lumber Company as the Crooked River Lands? A. Yes, sir.

Q. I will ask you whether or not the Crooked River Lands were referred to at all in the Steunenberg contract or prior to the making of it?

A. No, sir.

Q. Did you have any knowledge then of the Crooked River Lands at the time he was here and you made your arrangements with him?

(Deposition of James T. Barber.)

A. No, sir.

Q. Were they in contemplation of the parties at all at that time? A. No, sir.

Q. The original plan then contemplated the lands here spoken of as the Basin Lands only?

A. Yes, sir.

Q. And comprising twenty-five thousand acres?

A. Yes, sir.

Q. The Barber Lumber Company has acquired since that time sixty-five or seventy thousand acres?

A. Yes, altogether.

Q. So the purchase of the property went beyond the scheme contemplated by Governor Steunenberg?

A. Yes, sir.

Q. What lands were talked over between you and Governor Steunenberg at and prior to the time of making this contract?

A. They were the lands that we commonly call Boise Basin lands; they were in the basin formed by the Moore's and Grimes Creeks and their tributaries running up in the mountains. Governor Steunenberg had said there were twenty-five thousand acres. It developed that there was a great deal more than that in the basin.

Q. You didn't acquire a great deal more than that from him? A. Not from him.

Q. I think the total was about sixteen thousand from him? A. Yes.

Q. I show you a letter-press copy of a letter found on page 661a of the letter-book produced, and ask you if that is a letter written by you to Mr. Palmer, or a

(Deposition of James T. Barber.)

copy of one, on or about that date?

A. Yes, sir.

By Mr. BUNDY.—I offer that letter in evidence.
It reads:

“Eau Claire, May 21, 1902.

A. E. Palmer,

Spokane, Washington.

Dear sir: The delay in reaching a definite conclusion as to our action in the various matters connected with the Idaho timber was occasioned by negotiations being carried on with Mr. McKnight. These negotiations reached a climax a few days ago and we have purchased his interest in this company. This *evolves* the payment of a very large sum of money and will prevent us from seeking investment in western timber for sometime to come. For this reason we have decided that we will not enter into the option for the purchase of the Payette Valley timber. We will, however, continue our plans in the Boise Basin. We have now associated with us Mr. William Carson, of Burlington, Iowa, who, with Mr. Moon, will leave here for Boise in about two weeks. They will go over the ground thoroughly and settle any question of detail and policy which will come up at that time. We are now negotiating for a three thousand acre block of scrip available in that section of the country and would like to know if you can use this at once as we understand it must be located in one transaction. It is our idea to push the location of the timber lands in the basin as rapidly as it can be done intelligently, and with this in view, we hope

(Deposition of James T. Barber.)

to send you another estimate in a few days. We will inform you of leaving of Messrs. Carson and Moon. You would probably *prefer* to meet them at Boise. I return herewith enclosures contained in your letter of the 13th and give foregoing as the principal reason why we do not care to investigate the proposition submitted."

Q. Can you tell what proposition that referred to, Mr. Barber?

A. It referred to the purchase of a lot of timber along the Payette River which as I recollect it now, the title to which had been secured by parties from the Government and they were offering it for sale.

Q. Under the Timber and Stone Act?

A. Possibly a part of it; I think it was all timber and stone property. The Payette River is the first river directly west of the Boise Basin.

Q. In another basin? A. Yes, sir.

Q. What is meant by pushing the location of timber lands and sending another cruiser for that purpose; state generally about this cruising.

A. As before stated here, we were planning all the time to file lieu land scrip upon all the lands which had not been filed upon under the Timber and Stone Act. In order to be able to place our scrip intelligently, of course, it was necessary for us to cruise the lands, look them over carefully, estimate the timber, and determine what subdivisions it would be worth while to put scrip on and whether that would cover timber enough to warrant us in continuing. He was there to get scrip; to prevent timber and stone entries; we preferred to use the scrip.

No. 1883

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.

THE UNITED STATES OF AMERICA (Complainant),
Appellant,

vs.

THE BARBER LUMBER COMPANY (a Corporation),
(Defendant), Appellee.

VOLUME XII.

(Pages 4401 to 4800, Inclusive.)

Upon Appeal from the United States Circuit Court
for the District of Idaho, Central
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FILED

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for the District of Idaho, Central
Division.**

(Deposition of James T. Barber.)

Q. Now, Mr. Barber, there has been some evidence introduced here tending to show you sent out cruisers over the lands, Dennis Thornton and C. B. Conners, to cruise and estimate the land which you had purchased and even land which was not open to entry, and I understand that is the fact, is it not?

A. Yes, sir.

Q. Will you state for the benefit of these amateurs in the timber business, why this was done, and the practice among lumbermen?

A. When you are laying plans for the purpose of buying a large tract of timber in a section of country, it is necessary for you to know all about that timber before your opportunity to buy comes up. It is your business to know how much timber there is before it is offered to you, so you may take advantage of the price when it comes up, and it is very customary for lumbermen in this country to either inform themselves upon timber in their locality which may possibly come into the market, before it is offered for sale. I think there was—I think we gave general instructions to find out where timber was located on the north fork of the Boise River.

Q. What is the relation between the cost of a milling plant and the timber necessary to supply it?

A. Well, of course, that would vary under varying conditions, but as a general proposition if a milling plant would cost one hundred thousand dollars, it would be exceedingly poor policy to build it unless you had more than two hundred millions of timber tributary to it. Now, small operations in a remote

(Deposition of James T. Barber.)

country cannot possibly be profitable from the fact that everything connected with the operation of your plant from the cutting down of the tree and the log has been manufactured into lumber and sold, costs a great deal more in a small way than in a large way, and I would say as a general proposition that your mill property and investments should not exceed fifty cents a thousand feet, but now that is not always true because of its extreme remoteness you may be able to get possession of timber somewhere at a very low price, and what would ordinarily be the value of the timber can be put into the plant to outlast the remote and expensive timber.

Q. What amount of timber or stumpage did you deem it necessary to acquire in the building of the mill at Boise, Mr. Barber?

A. I thought that, after going over the ground and becoming satisfied that a large portion of the timber up in that country could not possibly be utilized except by the construction of a railroad, we were concluded that it would not be worth while to undertake and develop and make it a manufacturing plant until we had secured about six hundred billions of feet.

Q. In your opinion at that time the carrying charge and investment of a sawmill would require six hundred billion feet to make it a profitable transaction?

A. Yes, taking into consideration the construction of a railroad.

Q. Going back to your talk with Governor

(Deposition of James T. Barber.)

Steunenberg which led up to the making of this contract, I will ask you to state whether or not Governor Steunenberg represented that he had deeds or what manner of title he had of the lands they had already bought?

A. He stated that the entrymen covering filings of several thousand acres, I couldn't tell you how many; I think four or five; had made final payments and received land office receiver's final receipts and that these were the ones that Steunenberg and Sweet had purchased. There seemed to be a question whether it was proper to take a deed from any entryman until patent had issued, and that was the reason that he had no deeds to show for the purchases he had made was given by him as an excuse why the patents had not issued on the land that they had already purchased.

Q. What, if anything, did he say as to the payments, as to whether or not they had paid in full for their claims purchased?

A. He said that pending the issuing of these patents, he had held back, I think he said one hundred dollars a claim, some amount in each case until patent was issued and deeds furnished.

Examination adjourned to 1:30 P. M. of this day.

1:30 P. M. the above examination was continued as follows:

(By Mr. BUNDY.)

Q. Now, Mr. Barber, I show you from the same letter-press book copy-book, on page 676, a letter addressed to Mr. Palmer. Is that a letter written and

(Deposition of James T. Barber.)

signed by you and mailed to him on or about that date? A. Yes, sir.

By Mr. BUNDY.—We offer the letter in evidence. It is number 76, page 676, and reads:

“Eau Claire, Wisconsin, May 30, 1902.

A. E. Palmer,

Spokane, Washington.

Dear Sir: I have your telegram and note that scrip must be in small denominations forty to *eight* acres and think this increases difficulty in securing it. I know nothing about details of securing Government lands by using scrip. We have several large bunches, 5000 to 20,000 acres offered to us, but we understand these parcels have to be used in one entry, on one tract each. However, this may not be so. Mr. Moon will leave here about the middle of next week and will take along one estimator and compass man. He will write you when he determines the exact day of leaving.

Yours truly,

J. T. BARBER.”

Q. In the same book I show you copy of letter dated the next day. May 31st; is that a copy of a letter you wrote Mr. Palmer on that date?

A. Yes, sir.

By Mr. BUNDY.—We offer it in evidence. It reads:

“Eau Claire, May 31, 1902.

A. E. Palmer,

Spokane, Washington.

Dear Sir: In the matter of using forest reserve

(Deposition of James T. Barber.)

scrip in locating Government lands we are informed that the scrip in question may be placed on single forties in different sections and townships, the one condition being that if the scrip in question calls for three thousand acres more or less as the case may be, three thousand acres must be entered at one time. The question now before us is, are you prepared to take up three thousand acres of Government lands in the Boise Basin under the conditions stated above? Kindly let us know promptly."

By Mr. GORDON.—What page is that?

By Mr. BUNDY.—682.

Q. I show you letter on page 701, same letter-press book, is that a copy of a letter you wrote and mailed Mr. William Carson about that time?

A. Yes, sir.

By Mr. BUNDY.—That is offered in evidence and reads as follows:

"Eau Claire, June 4, 1902.

Mr. William Carson,

Burlington, Iowa.

Dear Sir: Mr. Moon will leave here tomorrow morning and St. Paul tomorrow night for Boise and that section of the country in the interest of our timber purchases. He takes along one first-class estimator and one compass man who is able to assist somewhat in looking timber. His post-office address will be S. G. Moon, care Idanha, Boise, Idaho, and he will expect to meet you there as soon as you can arrange your affairs to leave. In the meantime, if you hear of a good estimator, it would be well, I

(Deposition of James T. Barber.)

think to take him along, as it seems desirable to get possession of the land still belonging to the Government which bears timber in our section of the country as soon as possible, with the use of scrip.

Please let me know as soon as you have determined when you can go west on this business.

Yours truly,

J. T. BARBER."

Q. From the same letter-press copy-book I show you a copy of a telegram dated June 20th, 1902, page 760; is that a copy of a telegram sent by you on or about that date to Mr. Palmer?

A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence. It reads as follows:

"Eau Claire, Wisconsin, June 20, 1902.

A. E. Palmer,

Spokane, Washington.

Can we handle five thousand Forest Reserve, at \$4.50?

Q. I show you a letter taken from the files of the Barber Lumber Company, marked 133; is that a letter you received from Governor Steunenberg at or about that date?

A. It is; yes, sir.

By Mr. BUNDY.—I offer that letter in evidence.

"Caldwell, Idaho, July 23, 1902.

Hon. J. T. Barber,

Eau Claire, Wisconsin.

My Dear Sir: Just returned from trip to Basin and found yours the 17th and 18th. I will give same

(Deposition of James T. Barber.)

consideration within a day or two as I am very busy just now with the details of the operation that requires immediate attention. I go to Boise this evening and in all probability you will hear from me there. Have word from Mr. Palmer that he will be there on the 25th, when I hope we will complete the scriping feature.

Yours very truly,

FRANK STEUNENBERG."

Q. I show you letter marked 930 taken from the files of the Barber Lumber Company and ask you if you received that letter from Mr. William Carson on or about the time of its date?

A. Yes, sir.

Q. Attached to that appears to be a telegram to Mr. Carson from the American Lumber Co. that was inclosed with Mr. Carson's letter?

A. Yes, sir.

By Mr. BUNDY.—We offer the letter in evidence and the attached telegram. The letter reads:

"July 31, 1902.

Mr. J. T. Barber,

Eau Claire, Wis.

Dear Sirs: Since writing you this morning advising you to wire Mr. Palmer to buy ten thousand acres of scrip, I have received your message informing me that Mr. Palmer has bought six thousand acres scrip at \$5.35.

Yours truly,

WILLIAM CARSON."

(Deposition of James T. Barber.)

Attached to that letter is a telegram which reads as follows:

“Portland, Oregon, 30th, 1902.

William Carson,

Burlington, Iowa.

Our price on ten thousand acre lots is \$5.40.

AMERICAN TIMBER COMPANY.”

Q. To what did that telegram refer, Mr. Barber?

A. It referred to lieu land scrip in ten thousand acre lots. The \$5.40 is \$5.40 per acre.

Q. I show you copy in the copy-book referred to at page 966, a telegram addressed to Palmer; was that a telegram sent by Palmer to you at or about that date? A. Yes, sir.

By Mr. BUNDY.—We offer it in evidence. It reads:

“Eau Claire, Wisconsin, August 11, 1902.

A. E. Palmer,

Spokane, Washington.

Will take five thousand at five thirty; ten thousand at twenty-five; otherwise will wait.”

Q. What was meant by taking five thousand at five thirty?

A. It means that we would authorize Mr. Palmer to purchase five thousand acres of lieu land scrip at \$5.30 an acre, or we would take ten thousand acres of the same thing at \$5.25 an acre.

By Mr. GORDON.—We enter an objection here to so much of this evidence as relates to the purchase and location of scrip and to negotiations relating to such purchase and location. Counsel for complain-

(Deposition of James T. Barber.)

ant object on the ground that it is immaterial and irrelevant to the issues in this case and we move to have it stricken out unless its materiality and relevancy are made to appear by later proof.

(By Mr. BUNDY.)

Q. I show you on page 970 of the letter-press copy-book referred to another letter addressed to Palmer and ask you if you wrote and mailed that letter on or about that time?

A. I did; yes, sir.

By Mr. BUNDY.—We offer it in evidence.

“Eau Claire, August 11, 1902.

Mr. A. E. Palmer,

Spokane, Washington.

Dear Sir: I am in receipt of a telegram from you dated yesterday which reads as follows: ‘boardman Scrip now ready. Shall I buy at best price?’ and I answered same as follows: ‘Will take five thousand at five thirty or ten thousand at twenty-five; otherwise will wait.’ For fear that you may not quite understand this I will explain by saying that it was my intention to say that we would purchase five thousand acres of scrip at \$5.30 or ten thousand acres at \$5.25. After the encouragement given by Mr. Phipps I do not feel like offering more than \$5.30 for this scrip until we have received some kind of word from him as to his ability to accommodate us. If it is possible for you to keep the Boardman people on the string for a week or ten days, this would probably be the best action.

Yours very truly,

J. T. BARBER.”

[Deposition of **S. G. Moon**, on Behalf of the Defendants.]

S. G. MOON, called as a witness, was first duly sworn to testify the truth, the whole truth and nothing but the truth relative to the above-entitled action, and thereupon testified as follows in answer to the following interrogatories put to him:

(By Mr. BUNDY.)

Q. Mr. Moon, you live in this city?

A. Yes, sir.

Q. What is your age?

A. Thirty-seven.

Q. What is your business?

A. I am in the lumber business.

Q. And you are one of the defendants in this action?

A. Yes, sir.

Q. Have you heard the evidence of Mr. Barber this morning relative to meeting Governor Steunenberg?

A. Yes, sir.

Q. I will ask you as to whether or not the preliminary correspondence between this end of the line and Mr. Palmer which resulted in Governor Steunenberg coming here and was carried on entirely through Mr. Barber, was it not?

A. Yes, sir.

Q. After Mr. Barber left here on March 12th, who conducted the negotiations from that time until his return?

A. I did.

Q. I neglected to ask Mr. Barber and you about George S. Long. You know him do you not?

A. Yes, sir.

(Deposition of S. G. Moon.)

Q. What relation did he have at any time to your company here, the North Western Lumber Company?

A. He worked for the Northwestern Lumber Company, I cannot remember the exact dates, but from about 1880, or soon after that until, I think, sometime in 1899.

Q. And in what capacity, Mr. Moon?

A. His office was manager of sales. He looked after the selling of all of our stock and all of our lumber and largely after the manufacture of it; that is, he directed as to how it should be cut to a large extent; the stock that the market required.

Q. Have you any objection to telling the salary that was paid to Mr. Long here, to tell what kind of a man he was?

A. I do not remember exactly; four or five thousand dollars; Mr. Barber may remember.

Q. And he stayed with you until he accepted a position with the Weyerhauser Lumber Company?

A. Yes, sir.

By Mr. BARBER.—He resigned his position with the North Western Lumber Company and went into the Prinleyham & Hirksom Co.

Q. Do you want to correct your evidence?

A. Yes, I remember he did go into Prinleyham & Hirksom Co. for a short time; but I don't know just how long, but until he took charge of the Weyerhauser timber forces.

Q. Now, Mr. Moon, do you know the defendant John Kinkaid?

(Deposition of S. G. Moon.)

A. I have met Mr. Kinkaid.

Q. Did you ever have any correspondence with him? A. No, sir.

Q. Did you ever have any business transactions with him? A. No, sir.

Q. Did you ever meet him at any time and any place in a business transaction? A. No, sir.

Q. Do you know John I. Wells, of Boise, Idaho?

A. I have met him.

Q. Casually or otherwise?

A. Casually; I think I never met him more than twice; the first time as I remember it was in the lobby of the hotel; met him with a number of other Idaho people.

Q. Did you ever have any business relations or transactions with him? A. No.

Q. Any correspondence with him in any way?

A. No.

Q. Ever buy any timber of him in Idaho or elsewhere from him? A. No.

Q. Do you know the defendant, L. M. Pritchard?

A. No, sir.

Q. Ever meet him? A. No, sir.

Q. Had you ever met Ex-Governor Steunenberg of Idaho prior to his arrival here in March, 1902?

A. No, sir.

Q. Did you ever have any personal relations or transactions with Mr. Rand with reference to timber deals in Idaho? A. No, sir.

Q. Or Mr. Long?

A. That was conducted by someone else; I don't

(Deposition of S. G. Moon.)

remember anything in detail about it.

Q. Now, Mr. Moon, do you remember that the night, the time that Mr. Barber left here for his vacation, in March, 1902, that Governor Steunenberg left the city at or about the same time?

A. Yes, I think the same night.

Q. Going west?

A. Going west, as I remember it, the same evening of the night that Mr. Barber left.

Q. Did you, following the making of that agreement with Mr. Steunenberg here, on March 12, did you write or cause to be written to A. E. Palmer a letter of instructions of the part he was to take?

A. Yes; when Mr. Barber left, he was not very well and was going south for a rest; said he wanted a short rest and wanted me to conduct and look after the business both with reference to these matters and others as far as possible, and asked me, as I remember it, to send the contract or copy of the contract to Mr. Palmer and write Mr. Palmer with reference to it. When I came to do it, it seemed like more of a job than I wanted to tackle alone, so I came down and asked Mr. Frawley, who drew the contract, to help me with a letter to Mr. Palmer, and I think he drew the letter for me.

Q. And you signed it?

A. I signed it and took it up to the office evidently, and got the contract and enclosed it with the contract and sent it to Mr. Palmer.

Q. I show you a letter-press copy-book, marked D. R. Moon E.; is that a book kept by your father

(Deposition of S. G. Moon.)

during his lifetime?

A. Yes, sir, that is a book that father wrote his letters in; business and personal; being letters instead of going in the general book, went into that book; also his personal letters; a large part of them.

Q. After his death did you continue to use that book for some of your correspondence?

A. Yes, sir.

Q. I show you letter at page 1172 of the D. R. Moon book and ask you whether or not that is a letter which you sent and mailed to A. E. Palmer giving him his instructions under this contract?

A. Yes, sir.

By Mr. BUNDY.—We offer that letter in evidence which reads as follows:

“Eau Claire, Wisconsin, March 13, 1902.

Mr. A. E. Palmer,

Spokane, Washington.

Dear Sir: Mr. J. T. Barber and myself have entered into a contract with Mr. Frank Steunenberg, a copy of which I herewith inclose, the most important features of which are as follows:

First. That Steunenberg represents to us that there are valuable tracts of timber lands on Moore's Creek and Grime's Creeks in Idaho.

Second. That Steunenberg and one Sweet have heretofore explored said lands and have perfected title to certain thereof and expended therefor large sums of money.

Third. That Sweet is willing to sell out his interest and will sell out the same and transfer all his

(Deposition of S. G. Moon.)

title therein to us for the amount of his investment and an additional fifty per cent thereof; that his investment amounts to about twenty-two thousand dollars, and we will pay him thirty-three thousand therefor.

Fourth. Steunenbergs represents that within six months from the date, he will obtain and perfect in us title to twenty-five thousand acres of land in this Basin with at least two hundred million feet of pine and fir timber thereon, of which at least eighty per cent is pine; that none of such lands will cost to exceed \$6.50 per acre, and the whole lot of twenty-five thousand acres will not cost to exceed one hundred forty thousand dollars.

There are other features in the contract, but these are the principal ones. Now, we are relying upon you to do the following things:

First: To satisfy yourself that there is timber of the kind and character represented situated upon the creeks in question in Boise Basin, and that the title to at least twenty-five thousand acres may be obtained and properly invested in us by an expenditure and cost not exceeding one hundred forty thousand dollars. Before anything is paid out to Sweet or any further move made, we want you to be satisfied that there are timber lands in the region as represented; that the title of these lands may be obtained by us from Steunenbergs to the extent of twenty-five thousand acres, and that the cost thereof will not exceed one hundred forty thousand dollars. We also want to be satisfied that if we purchase

(Deposition of S. G. Moon.)

these timber lands, they are so situated that the timber to be taken therefrom will be available for use.

After satisfying yourself that the representations of Steunenberg are true, we wish you to proceed to settle up with Sweet for us.

Second. Settlement with Sweet.

Steunenberg represents that Sweet has invested the following items: A. \$12,200.00; B. \$6,000.00; C. with S. \$7,500.00, one-half of which is \$3,750.00; making a total investment of \$21,950.00. These figures are not absolute, but Mr. Steunenberg says they are substantially correct.

You are to check these matters over and determine precisely the amount of money actually invested by Sweet, including the portion he has jointly invested with Steunenberg. Mr. Sweet is to turn over to you all his papers including estimates, notes, memoranda of every kind and nature relating to these lands and to this deal. He is to make proper deeds and conveyances of all lands to which he has acquired title or in which he has any interest, to us. If he should have any mortgage or other evidence of indebtedness or any contracts or liens upon any of these lands; all these are to be assigned and turned over to us. We are, however, not to assume any liability or obligation in or about any of his contracts, except that we will pay what is necessary to procure the title to any lands in us.

When you have thus checked over the account of Sweet and determined it to be correct and that his

(Deposition of S. G. Moon.)

investment does not exceed twenty-two thousand dollars, and that he has title in him of sixty-four hundred acres and has title practically perfected to substantially five thousand acres more, and when all matters we have enumerated are properly transferred from him to us, advise us of the amount required and we will send you a draft therefor or give Mr. Sweet or his correspondent credit in Chicago or Milwaukee by telegraph or otherwise for the amount.

The writer will send you a separate note as to manner of procuring funds at the time of checking up and adding the matter of investment of Sweet. You will also add the investment of Steunenberg and ascertain the amounts he has invested in this enterprise, on the same basis and in the same manner as passing on Sweet's account.

Third. Subsequent advances to Steunenberg. We agree to advance from time to time to Steunenberg for the purpose of procuring Government scrip with which lands in this territory are to be located in our names; the entire cost to us of this land shall in no case exceed \$6.50 an acre. The scrip, of course, will cost much less. It is to be obtained at the lowest price practicable. There will be expenses in selecting the lands upon which this scrip is located. These expenses will be proper items to be taken into consideration in determining the price of the lands. Certain of these lands may be purchased of private owners. These, of course, will be paid for; all of the titles, however, being vested in us and when the funds are necessary therefor or for any of these proposi-

(Deposition of S. G. Moon.)

tions, they will be procured and obtained from us in the manner outlined in my separate note to you of this date.

The general situation is that Governor Steunenberg comes to us with certain representations, making certain contract and arrangements with us, and while not releasing him from any of his responsibilities to us, we wish you to see that his representations are true, and that the moneys advanced and paid by us are properly expended for value received by us in the title of lands which you are satisfied are well timbered and are of kind and character represented, and that they will cost no more than heretofore set forth.

You will read the contract over carefully and observe that the title to the land to be vested in us must be good and perfect. You will see that the conveyances to us are in proper form. We, of course, to reimburse you for your services and to pay all necessary expenses by you incurred in looking after this business we entrust to you. We would not go into this business if it were not for the fact of your kindly offer to us in the premises and would abandon it now if we could not avail ourselves of your tact, discretion and good business judgment.

Yours very truly,

S. G. MOON."

Q. I show you a letter from the files of the Barber Lumber Company, marked number 37, and ask you if that is a letter you received from Mr. Palmer on or about that date? A. Yes.

(Deposition of S. G. Moon.)

By Mr. BUNDY.—The letter reads as follows:

“Spokane, Washington, March 26, 1902.

S. G. Moon, Esq.,

Eau Claire, Wis.

Dear John: Phoned Steunenbergs yesterday. There is no particular hurry so I will wait until day after to-morrow to leave for Boise. In the meantime I hope to get a cruiser from Mr. Deary. Please do your utmost about securing a good estimator.

Very truly,

A. E. PALMER.”

Q. Who is the Mr. Deary referred to in there, Mr. Moon?

A. Mr. Deary is a man whom I do not know. He was connected with Mr. Turrish first and finally the Weyhauser people in Idaho.

Q. Well, he is a man in the timber business?

A. Yes, sir. He is a man in the timber business. He has bought tracts of timber with Mr. Turrish there, both in northern and southern Idaho; I think in the Payette country.

Q. Was he employed by your company in any way?

A. No; I didn't know him.

Q. Ever have any business relations with him?

A. No.

Q. Got a cruiser from him so to get one he would recommend?

A. Yes, sir.

Q. I show you letter number 39; is that a letter you received about that time?

A. Yes, sir.

By Mr. BUNDY.—We offer 39 in evidence, as follows:

(Deposition of S. G. Moon.)

“Spokane, Washington, March 27, 1902.

S. G. Moon, Esq.,

Eau Claire, Wisconsin.

Dear John: Am leaving for Boise to-night and enclose a cipher code I might use in telegraphing you after returning from the timber.”

Q. This cipher code was never, in fact, used, was it?
A. No.

Q. I show you letter-press copy of letter on page 1197 of the D. R. Moon book and ask you if that is a copy of a telegram sent by you to Mr. Palmer on day shown?
A. It is.

By Mr. BUNDY.—We offer that in evidence. It reads:

“Eau Claire, Wisconsin, March 29, 1902.

A. E. Palmer,

Spokane Hotel, Spokane, Washington.

Estimator Dennie Thornton leaves here Tuesday. Will report to you at Spokane.

S. G. MOON.”

Q. Now, what was the object, Mr. Moon, of sending a cruiser out at that time before you had closed with Mr. Sweet?

A. It was in anticipation of closing with Sweet and to determine from our own men, if possible, before we—I don’t remember whether we expected to get his reports before we closed or not, but in a general way, we wanted to get estimates on the timber in the basin.

Q. Was it not for the purpose of assisting Mr. Palmer and determining whether or not the represen-

(Deposition of S. G. Moon.)

tations of Steunenberg were true?

A. I think so. I am not positive, whether we waited for his report before closing with Sweet or not.

Q. He would report to Palmer, would he not?

A. Yes, to Palmer; he did report to Palmer.

Q. And Palmer was out there for the express purpose of finding out whether Steunenberg's representations were true and the estimator was sent out there to find out? A. Yes, sir.

Q. I show you a letter apparently of the same date, on page 1198 of the D. R. Moon copy-book; is that a copy of a letter you sent to A. E. Palmer?

A. Yes, sir.

By Mr. BUNDY.—(Reads letter.)

“A. E. Palmer,

Spokane, Washington.

Dear Al: I am sending you an estimator, Dennie Thornton. He will leave here Monday or Tuesday. Am wiring you to-day ‘Estimator Dennie Thornton leaves here Tuesday; report to you at Spokane.’ I told him to go to your hotel at Spokane and they would tell him where you were to be found. We agreed to pay him \$4.50 per day and his man \$2.50 or \$3.00. Am giving him \$150.00 to-day for expenses going out there for which he will account to you. He has not had a great deal of experience as an estimator but has worked in the woods a great deal and has done considerable estimating for us. He says he has estimated timber in Idaho, both white pine and yellow.

Yours truly,

S. G. MOON.”

(Deposition of S. G. Moon.)

Q. I show you a letter taken from the files of the company and ask you whether or not you received that letter from Palmer on or about its date?

A. Yes, sir.

By Mr. BUNDY.—Letter marked number 42 we offer in evidence. Written from Boise, Idaho.

“Boise, Idaho, March 30, 1902.

S. G. Moon, Esq.,

Eau Claire, Wis.

Dear John: Am going up into the timber to-morrow. Meet the Governor to-night. Capt. Henry and Turrish have been here. They are figuring on all the timber tributary to the Boise River and I think the Payette also. I crossed the Payette River to-day. It is a fine stream and from all I can learn that it will be a good one for you.

Very truly,

A. E. PALMER.”

Q. Who is Capt. Henry and Mr. Turrish?

A. Capt. Henry is a man who lives here and who is, I believe an old cruiser; has done that sort of work and he is interested in various timber propositions and a man I have known for a great many years. And Mr. Turrish is a man from this part of the country. He lives now in Duluth. He has grown up in the timber business.

Q. Letter 42 just shown you; Mr. Palmer refers to same deal, referring to the Payette River; is the Payette River land and the Boise Basin lands two distinct regions?

(Deposition of S. G. Moon.)

A. Yes, sir. And what he refers to is Payette lands and Boise lands.

Q. I now show you a letter taken from the files of the company and ask you (marked 44) is that a letter you received from Mr. Palmer at or about its date?

A. Yes, sir.

By Mr. BUNDY.—We offer it in evidence; it reads as follows:

“Boise, Idaho, April 20, 1902.

S. G. Moon,

Eau Claire, Wis.

Dear John: Returned last night from the timber. Drove for about three miles into some very nice timber. Am satisfied you could get about twenty thousand acres besides which there is some State and unsurveyed land which could be acquired later. Saw timber between Centerville and Placerville that will run eight thousand to the acre, fifty per cent yellow pine, thirty per cent bull pine, twenty per cent no good. Am pretty familiar with this class of timber as we cut considerable of it at our mill at Golden. The proposition is not practicable. Requires forty-five miles of a railroad before you reach the timber. This road would cost at least five hundred thousand dollars. Neither Grimes Creek nor Moores Creek are any use for any quantity over say one million.

The Governor will be here to-night when I will arrange with him to acquire the State land along the Payette if you want it. I will attend to the Government and other lands along the Payette myself.

(Deposition of S. G. Moon.)

We'll get an option on the Cobban tract at once, if not too late. Capt. Henry Turrish and others are looking into the Payette. Governor Scofield arrived here this morning. Will send a good man into the Payette at once. And if this does not meet with your approval let me know.

The country beyond Pioneerville slopes toward the Payette so that some of the timber Steunenberg had in mind may come in yet. Will keep Steunenberg in good humor as he will be valuable in acquiring State lands.

Inclosed is a State map which will show you where I was; also the Payette River.

Yours truly,

A. E. PALMER."

Q. What was meant in that letter by saying these creeks were not of any use for any quantity over one million feet?

A. I took it that he meant that not to exceed one million feet per annum could be driven out of either of the creeks; that is during the time that the water, that there was a sufficient quantity of water in the streams to drive logs, there could only be that quantity of logs driven out.

Q. Where is this Cobban tract, if you know?

A. The Cobban tract is along the Payette River. It seems that a man by the name of Cobban and Casey, if I remember correctly, had bought a lot of timber and stone entries along the Payette River and had them for sale and were offering them at that time.

(Deposition of S. G. Moon.)

Q. Do you know how many acres were in the Cobban tract?

A. No; we did know and had the estimates.

Q. The Cobban tract had no reference to lands in the Boise Basin? A. No.

Q. But was another proposition that Palmer had found for you?

A. Yes, sir; along the Payette River.

Q. I now show you a letter from the files of the company marked 45, and ask you if that is a letter you received from Mr. Palmer at or about its date?

A. Yes, sir.

By Mr. BUNDY.—We offer this letter in evidence which reads as follows:

“Spokane, Washington, April 3, 1902.

S. G. Moon,

Eau Claire, Wis.

Dear John: I have your letter and telegram of the 29th; also telegram of this date to which I replied, ‘Shall I close and send Thornton to estimate?’ You need not be alarmed. I will not put you to any expense on the Payette without your consent. There is no doubt considerable good timber in the Boise Basin and during the high water several millions might be driven. You will see high water when you come out in May and can then size up the situation as everything about the proposition is easily seen. What lands I saw will easily go eight thousand to the acre. Steunenberg thinks the stream can be driven in large quantities from junction of creeks. Steunenberg tells me Capt. Henry is after the Payette

(Deposition of S. G. Moon.)

State lands. Would like to send a man up there. My object in wanting an option on the Cobban timber is to have it tied up while you secure the State lands. Steunenbergl claims he can get it. Wire me if I shall have the Governor sign the contract and proceed to close up the deal?

Very truly,

A. E. PALMER."

Q. I show you a telegram taken from the files of the company and ask you if you received that letter at or about its date, April 3-4, number 46?

A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence.

"Spokane, Washington, April 3-4th.

"S. G. Moon,

Eau Claire, Wisconsin.

Shall I close and send Thornton to estimate."

Q. I now show you copy found in letter-press copy-book of D. R. Moon referred to, on page 1209, and ask you if that is a copy of message you sent to Mr. Palmer on April 3, 1902?

A. Yes, sir.

By Mr. BUNDY.—I offer that in evidence.

"Eau Claire, April 3, 1902.

A. E. Palmer,

Boise, Idaho.

If telegram refers to Payette go slow.

If other proposition am inclined to go ahead.

S. G. MOON."

Q. I show you copy of letter on page 1210 of D. R. Moon copy-book and ask you if that is a copy of a

(Deposition of S. G. Moon.)

letter you wrote Mr. Palmer on that date?

A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence.

“Eau Claire, April 3, 1902.

A. E. Palmer,

Idaha-ha, Boise.

Dear Al: I have yours of the 30th; also your wire of yesterday is received. ‘If telegram refers to Payette, go slow; if other proposition, am inclined to go ahead.’ I got a reply from Boise this morning that it could not deliver the message; that you had returned to Spokane. I am inclined to think that if the timber is there in the Boise Basin of the quality and quantity represented, that we would prefer that proposition to the Payette. If you cannot see any better way to get at the Payette proposition, you might get the best option possible from the Cobban-Casey people. I am inclined to think that when Mr. Barber goes out in about three or four weeks, Mr. Carson and perhaps others will go with him and they will be looking for some good lay out.

Yours truly,

S. G. MOON.”

Q. I now show you telegram or letter; a copy of a telegram found in the files, dated April 4, marked number 47; is that in your handwriting?

A. Yes, sir.

Q. That seems to have been copies instead of being put in the book?

A. It is not in the book.

(Deposition of S. G. Moon.)

Q. That is a copy of a message that you wired at that time? A. Yes, sir.

By Mr. BUNDY.—We offer 47 in evidence.

“April 4, 1902.

A. E. Palmer,

Spokane Hotel, Spokane, Washington.

Yes; if everything seems square.

S. G. MOON.”

Q. Now, Mr. Moon, was that telegram in answer to a telegram which you received during the night of the 3d and 4th which has been offered in evidence as 46, and in which Mr. Palmer said, “Shall I close and send Thornton to estimate”?

A. Yes, sir.

Q. And your answer was, “Yes, if everything seems square”? A. Yes, sir.

Q. I now show you a letter taken from the files of the company marked number 50 and ask you if that is a letter you received from Palmer at or about its date? A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence.

“Spokane, Washington, April 4, 1902.

S. G. Moon, Esq.,

Eau Claire, Wis.

Dear John: Your wire of even date received. Have phoned Governor I would be there on the 6th or 7th to close with him. Thornton leaves this P. M. he will follow Moores Creek from the Boise river to the junction of the two creeks, about fourteen miles. You know Thornton has been in that district before. He thinks the creek can be driven from

(Deposition of S. G. Moon.)

junction to Boise river. The only title so far acquired to this timber is the receiver's receipts and unless the government should find cause to refuse patents, the patents should come in due time. In dealing I must take it for granted that patents will be issued. It looks as though the Cameron Lumber Company deal would go through.

I inclose copy of an act re Franchises to Improve Rivers in Idaho.

Yours very truly,

A. E. PALMER."

Q. I now show you a letter taken from the files of the company number 52, and ask you if that is a letter you received from Mr. Palmer at or about its date? A. Yes, sir.

By Mr. BUNDY.—We offer 52 in evidence, which reads as follows:

"Spokane, Washington, April 5, 1902.

S. G. Moon, Esq.,

Eau Claire, Wisconsin.

Dear John: Am going to Boise today to close with Steunenberg. You understand the only title you get pending patent is a receiver's receipt, and these receipts are in the names of a great many people. Personally, I am satisfied everything will come out as the Governor expects. Think it is his intention to scrip the balance of the land. This plan may cost more but is safer.

Very truly,

A. E. PALMER."

(Deposition of S. G. Moon.)

Q. Now, Mr. Moon, I show you telegram taken from the files of the company, marked 53, dated 7th of April, and ask you if that is a telegram you received from Mr. Palmer on or about that date?

A. Yes, sir.

By Mr. BUNDY.—We offer that, 53, in evidence which reads as follows:

“Boise, Idaho, April 7, 1902.

S. G. Moon,

Eau Claire, Wisconsin.

Am ready to close on sixteen thousand acres provided you understand there are no titles until patents are issued. Answer here.

A. E. PALMER.”

Q. Now, Mr. Moon, it seems you had been advised by two or three telegrams and letters from Mr. Palmer that the only titles you were getting were receiver's receipts, and that he was ready to close on a large number of acres provided you understood that all the title you were getting were receiver's receipts; now, I will ask you what title you understood you were getting in your talk with Governor Steunenberg?

A. We understood we were getting a title based upon receiver's receipts; final receiver's receipts, but, as I remember it, we didn't expect that we would get deeds until after patent had issued.

Q. So that the information that Mr. Palmer was giving you was nothing new to you as to the receiver's receipts?

A. No; that was the title we expected to get.

(Deposition of S. G. Moon.)

Steunenberg was expected to hold these receipts in his possession and he so told us; and if I remember. Mr. Frawley advised us that that was perfectly safe; if Mr. Steunenberg got these receipts and held them until patents were issued, he could undoubtedly get the land.

Q. Now, after you had had these various telegrams and were called upon to decide definitely as to whether to close the deal on this information, that the only title you had was based upon receiver's receipts, who, if anyone, did you consult?

A. Why, I consulted Mr. Frawley again. He had advised us with reference to receiver's receipts and I naturally consulted him to find out if it was all right.

Q. I will ask you, if at *you* request, again directed Mr. Palmer as to what to do in the premises; did Mr. Frawley write Mr. Palmer at your request?

A. He did.

Q. And wire him to the same effect?

A. Yes.

Q. I now show you a letter taken from the files of the Barber Lumber Company, 296, signed T. F. Frawley, April 7, 1902, and ask you as to whether or not you received that letter relative to the decisions on that date? A. Yes, sir.

Q. Was there attached to it the copies that are now attached? A. Yes.

By Mr. BUNDY.—We offer that in evidence, and the papers attached.

By Mr. KEIGWIN.—We object to the letter and

(Deposition of S. G. Moon.)

accompanying copy on the ground that they are immaterial and irrelevant to the issues in this case.

By Mr. BUNDY.—Letter of Mr. Frawley reads as follows:

“Eau Claire, Wisconsin, April 7, 1902.

S. G. Moon,

Eau Claire, Wis.

Dear Sir: Inclosed please find copy of letter and message by me this day written and sent to A. E. Palmer at Boise City, Idaho.

Yours truly,

T. F. FRAWLEY.”

Attached to the letter is the following letter:

“Eau Claire, Wisconsin, April 7, 1902.

A. E. Palmer, Boise, Idaho.

Dear Sir: Mr. S. G. Moon in reply to your telegram of this date wired you this afternoon as follows: ‘A. E. Palmer, Boise, Idaho. I understand that titles have been perfected in a legal way to certain lands in certain parties, final proofs made and approved by local officials United States Land Office; final receipts issued or will issue upon payment of certain sums to Government, and nothing remains to be done but patents to issue; that these parties have legal right to sell and we to buy; patents will issue to us in order to perfect our title in this land; we to pay Sweet the amount to which he is entitled and other actual investments necessary to perfect title to land to be vested in us. Our contract and letter of instructions defines our rights and under-

(Deposition of S. G. Moon.)

standing. If in doubt await letter from Mr. Frawley.

S. G. MOON.'

In addition I will say that Mr. Steunenberg represents that final proofs have been made in about sixty-four hundred acres and final receipts issued therefor, and that final proofs were about ready in from forty-six hundred to five thousand acres in addition thereto, and that final receipts would be issued therefor. Now, we do not quite understand where the sixteen thousand acres comes in unless it is for government scrip. It was the understanding that when the matters were in the conditions stated that Mr. Moon and Mr. Barber would buy out Mr. Sweet and pay him the amount to which he was entitled to under the contract, but at the time of payment the title to all the lands upon which final proofs were made and final receipts issued, should be vested in Mr. Barber and Mr. Moon. Nothing must be left to depend upon any action of Sweet or any of the parties there, but these lands are obtained after Sweet is paid and these parties get their money. This is especially so concerning sixty-four hundred acres of land. Of course, if money be necessary to pay any fees of the government or other necessary expenses for us to pay out in the way of purchase price of these lands, when the title is perfected, the parties here are ready to advance the money. You understand that Mr. Barber and Mr. Moon are ready to pay the money precisely according to their understanding of the contract, but if the situation be such

(Deposition of S. G. Moon.)

that they cannot get title to these lands as the money is advanced, they do not wish to obtain lands, except under government scrip. I think you understand the situation precisely, but parties here would rather not go into the deal out there unless they can get title to the lands precisely in the manner outlined and defined in the contract. If there still be any doubt in your mind as to the course to pursue, either wire the situation at length or wait letter. It is better that the deal shall fall through rather than any money be invested in an uncertainty, but if things be certain and sure to the extent indicated in this letter and telegram and in the contract, then the parties are anxious to make this investment.

Yours truly,"

Q. Now, Mr. Moon, was that the final instructions you gave to Mr. Palmer relative to closing that deal?

A. Yes, sir, as far as I remember it.

Q. And that letter was prepared by Mr. Frawley at your request?

A. Yes, sir.

Q. And sent by your authority and under your direction?

A. As I remember it I came and talked to him and he outlined what he advised me to write and then suggested that he write it himself here.

Q. I show you a telegram taken from the files of the company sent by Mr. Palmer and marked number 56, is that the next telegram received in its order as you remember it from Mr. Palmer?

A. Yes, sir.

(Deposition of S. G. Moon.)

By Mr. BUNDY.—We offer that in evidence. It reads as follows:

“Boise, Idaho, April 11, 1902.

S. G. Moon, Eau Claire, Wisconsin.

Deal closed. Statement and draft forty thousand Spokane Saturday. Sweet's thirty-three thousand held by Steunenbergs six months as guarantee to titles.

A. E. PALMER.”

Q. I now show you a check and ask you if you know the handwriting of that check?

A. Yes, sir.

Q. Written by Mr. A. E. Palmer?

A. Yes, sir.

Q. And dated April 10th?

A. Yes, that is Mr. Palmer's writing and signature.

Q. I show you another check; the one first shown you is for \$32,925.00; I show you another check dated April 10, 1902, A. E. Palmer to Frank Steunenbergs, \$5,800.00; is that Mr. Palmer's writing?

A. That is Mr. Palmer's signature and writing.

Q. I show you another check, dated April 11, 1902, for \$1,200.00; that is also Mr. Palmer's handwriting and signature? A. Yes, sir.

By Mr. BUNDY.—We offer check referred to by witness for \$32,925.00, drawn by A. E. Palmer on Exchange National Bank, Spokane, Washington, payable to the order of William Sweet, endorsed on the back “Pay to the order of Frank Steunenbergs” signed, “William Sweet by J. H. Richards, his at-

(Deposition of S. G. Moon.)

torney in fact; also, endorsed by Frank Steunenberg on the Bank of Commerce, Idaho; I offer the other check, \$5,800.00 referred to by witness, payable to the order of Frank Steunenberg, signed, "A. E. Palmer" drawn on the same bank, and endorsed by Frank Steunenberg to the Commercial Bank of Caldwell, Idaho; I also offer the third check referred to by witness, for \$1,200.00, drawn by A. E. Palmer to the order of Frank Steunenberg on the same bank, endorsed by Frank Steunenberg and Bank of Commerce, Boise, Idaho.

Q. Now, Mr. Moon, the sum total of these checks which were drawn on the 10th and 11th days of April, 1902, by Palmer on his own personal account at Spokane, was reimbursed to him by a draft of forty thousand dollars or about that, drawn on you on that date, was it not as shown by that letter?

A. Yes, sir.

Q. Will you kindly look at the account of A. E. Palmer on page two of the ledger of the Barber Lumber Company, which contains two charges, one dated April 17, Cash \$38,763.75, and under the same date, Cash \$1,201.20; referring to page one of the journal showing a payment of drafts of this amount, on April 17, does it not?

A. Yes, sir.

Q. Is that the first money advanced by the Barber Lumber Company or by S. G. Moon or J. T. Barber or anyone else for the purchase of lands in Idaho?

A. Yes, sir.

Q. And the charges to Mr. Palmer on April 17, on the books of the Barber Lumber Company was

(Deposition of S. G. Moon.)

for a draft to cover the three checks offered in evidence, with exchange on the draft; that is correct, is it not? A. Yes, sir.

Q. I show you a letter taken from the files of the company, and ask you if that is a letter you received from Mr. Palmer at or about its date?

A. Yes, sir.

By Mr. BUNDY.—I offer 561½ in evidence, being the number attached to the letter just referred to.

“Spokane, Washington, April 14, 1902.

S. G. Moon,

Eau Claire, Wis.

Dear John: I made draft on you today for \$38763.75 which is per my letter of the 12th inst; \$38725.00 and exchange \$38.75. The above was in payment of business already transacted before closing with Steunenbergh. I also made draft on you for \$1201.20 in payment of three entries made at the land office in Boise on Saturday, \$1200.00; exchange on draft \$1.20. Gave Steunenbergh my check for the above \$1200.00 and expect to be advised today or tomorrow of the proper entries for same, that is, names of locators and land office receipt numbers which information I shall forward to you. Wish you would have somebody check over written list of descriptions sent you with them. They do not have their records in very complete shape and I would not be surprised if there were a few discrepancies in the descriptions, but they can be easily corrected. I am keeping a record here of all this land, money paid on same, etc. Suppose you understand it is necessary for Steunen-

(Deposition of S. G. Moon.)

berg to have possession of all the land office receipts in case called upon to produce one at any time. Will send you a tracing of that district following the road, river and creeks from Boise to timber. This tracing is correct.

Very truly,

A. E. PALMER."

Q. Mr. Moon, at any time up to the point where we have now reached in this examination, had you heard from any source of the issuing of what is known as temporary receipts at the land office in Boise? A. No, sir.

Q. When did you first learn of the fact that in the original Basin entries temporary receipts were issued at the time of making final proof?

A. I never heard that until after this action was started; you told me.

Q. And did you ever know it until my return from the Borah trial? A. Never.

Q. In any way, from Mr. Steunenberg, Palmer or any other source, were you advised or told up to the time we have reached now, April 10, 1902, that the receipts which had been issued were not final receipts authorizing the issue of patents?

A. No, sir.

Q. I now show you a telegram taken from the files of the company marked number 65; is that a telegram you received from Mr. Palmer at or about its date? A. Yes, sir.

By Mr. BUNDY.—We offer that telegram in evidence. It reads:

(Deposition of S. G. Moon.)

“Spokane, Washington, May 1st, 1902.

S. G. Moon, Eau Claire, Wis.

Steunenbergs contract mailed you April 12th separate from letter. Will have another sent at once.

A. E. PALMER.”

Q. Does that refreshen your recollection with regard to the loss of the original contract?

A. Yes; he wrote me as I remember it, advising me that he was inclosing the contract and when the letter came the contract was not with it and I looked for the contract for a time, expected its arrival, as I remember it, and it didn't come, and I advised him that the contract had not been received.

Q. When was the contract which you and Mr. Moon made with Governor Steunenbergs signed up and agreed to and become operative?

A. It was finally signed, as I remember it, Mr. Barber and I executed the contract before Mr. Barber left here; that was on the 12th day of March; and I think Steunenbergs signed it some few weeks later.

Q. What I am getting at, Mr. Moon, was it signed and had it become operative before the payment of these checks by Mr. Palmer to Mr. Steunenbergs?

A. Yes, I presume so; that was our instructions.

Q. You don't understand; when you authorized Palmer to go out there and if he found these representations true to close with Sweet's interest.

A. Yes.

Q. And Sweet was paid on the 10th day of April, 1902; was that the date upon which Governor Steu-

(Deposition of S. G. Moon.)

nenberg signed the contract and it became operative?

A. I presume it is.

Q. And the contract which has been introduced in evidence here was depending upon the conduct of Steunenberg?

A. Yes, sir.

Q. Now, I show you a document here; I don't know what to call it; executed, purported to be executed by William Sweet; purporting to have been acknowledged by William Sweet on the 31st day of March, 1902; I will ask you as to whether or not you had any personal relations with Mr. Sweet in buying him out or whether it was all done through Governor Steunenberg?

A. It was all done through Governor Steunenberg.

Q. And is this document I show you a contract of Sweet's interest delivered to you by Steunenberg?

A. Yes, sir.

Q. Is that the only assignment you had?

A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence.

Q. This assignment of Sweet's was delivered to Mr. Palmer at the time he made the statement and delivered to you afterwards?

A. That is as I understand it.

By Mr. BUNDY.—We offer this in evidence. It reads as follows:

THIS INDENTURE, Made and entered into this 28th day of March, A. D. 1902, between William Sweet, an unmarried man, of Boise, Idaho, party of the first part, and James T. Barber and S. G. Moon,

(Deposition of S. G. Moon.)

of the City of Eau Claire, Wisconsin, parties of the second part:

Witnesseth, That Whereas, There are situate along and adjacent to Grimes Creek and *Mores'* Creek in what is known as Boise Basin, in the Southern part of Boise County, State of Idaho, many thousands of acres of timber lands upon which is standing and growing, pine and fir timber which will average at least ten thousand feet of board measure to the acre, eight thousand feet of which is pine;

That said lands are so situate that the said timber thereon may be practically handled and with great *preat* profit, in logging and manufacturing the same into lumber, and that the title to said lands may be acquired, by proper entries and proceedings in the Boise City, Idaho land office;

That heretofore the party of the first part and Frank Steunenberg, of Idaho, entered into and are now engaged in the enterprise and venture of exploring said lands and obtaining title thereto, and many entries of such lands have been made by divers and sundry parties, and first party and said Frank Steunenberg have invested and expended a large sum of money therein;

The amount so advanced by first party herein individually and upon his own account in furthering such enterprise is substantially Twenty Two Thousand Dollars:

That said first party and said Frank Steunenberg are willing and desirous that said first party herein

(Deposition of S. G. Moon.)

should assign and transfer all his right, title and interest in and to the enterprise aforesaid, and in and to the lands and the titles thereto, so by him acquired therein, to parties of the second part for the amount by him actually invested therein up to and including March 15'' 1902, together with a profit thereon of fifty (50%) per cent of the amount of such investment, the price and amount of such investment and advance so made by said Sweet, shall not exceed said sum of Twenty Two Thousand (\$22,000.00) Dollars, and shall be vouched for, determined and audited by A. E. Palmer of Spokane, State of Washington.

Now Therefore, For and in consideration of the premises and in consideration of said sum of Thirty Three Thousand (\$33,000.00) Dollars, or such less sum and amount as shall be determined, by said Palmer, as having been paid out by first party herein, together with fifty per cent hereof added thereto as herein stated, the party of the first part does hereby grant, bargain, sell, convey, remise, release and quit-claim unto said parties of the second part and to their heirs and assigns forever, all his right, title, interest, claim and demand in and to the enterprise and undertaking aforesaid, and in and to such lands and the title thereto, so by him, or in any manner by him acquired, held, owned or claimed, and full satisfaction and payment thereof shall be and is hereby acknowledged by and at the delivery and execution hereof.

To have and to hold all the above described prem-

(Deposition of S. G. Moon.)

ises, rights, interests, claims and demands, together with the appurtenances and privileges thereunto incident.

In Witness Whereof the party of the first part has hereunto set his hand and seal the day and year first above written.

WILLIAM SWEET. (Seal)

Witness:

JOSEPH B. BRAMAN.

State of New York,
County of New York,
City of New York,—ss.

On this 31st day of March, A. D. 1902, before me, Joseph B. Braman, a Commissioner of Deeds for the State of Idaho, in and for the State of New York and in and for said County of New York, personally appeared William Sweet, who is personally known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same, on this 31st day of March, A. D. 1902.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this 31st day of March, A. D. 1902.

(Seal)

JOSEPH B. BRAMAN,

Commissioner of Deeds for the State of Idaho, in
and for the State of New York, resident in said
City of New York.

Offices Equitable Building, 120 Broadway, Branch
and evenings 1274 Broadway, (Telephone Con-
nection) New York City.

(Deposition of S. G. Moon.)

Q. Now, Mr. Moon, up to April 10th, when that deal had been closed, had the Barber Lumber Company been organized? A. No, sir.

Q. It was not organized until sometime later in 1902, I think we will show. Up to that time had you or Mr. Barber or anyone else connected with your Company, paid out any money at all to any person for a tract of timber land in the State of Idaho?

A. No, sir.

Q. Up to that time had you or Mr. Barber personally or the Company you were interested in bought or did you then own any lands or interest in any lands in the State of Idaho?

A. No, sir, except an option, but we didn't pay anything for that option.

Q. That was on other lands?

A. That was on other lands, but in Idaho.

Q. So that the first investment you made was when Mr. Palmer acting for you, on the 10th day of April, 1902, made the checks to which your attention has been called and for which you reimbursed him by draft on April 17, 1902?

A. That was the first.

Q. Now, up to that time had you been to the State of Idaho? A. No, sir.

Q. And had Mr. Barber been there?

A. No, sir.

Q. I now desire to offer a few more letters relative to the location and procuring of scrip in the Boise Basin and otherwise, at that time; I show you a letter, Mr. Moon, or copy of a letter, page 1206 of

(Deposition of S. G. Moon.)

the D. R. Moon letter-book; is that a copy of a letter you wrote and mailed to Mr. Palmer at that time?

A. Yes, sir.

By Mr. BUNDY.—I offer this letter in evidence.

“Eau Claire, Wis., April 2, 1902.

A. E. Palmer,

Spokane, Washington.

Dear Albert: I have your favors of the 26th and 27th along with deed. I met Capt. Henry today on the street and got to talking about Idaho. He does not know we are interested in Boise Basin so talked pretty freely. He practically told me that he and his crowd together with Scofield expected to get control of timber in Boise Basin, so I should say that Steunenberg should not waste any more time than is necessary in getting ready to locate scrip. I do not think the Scofield crowd have done anything yet, except that they are pushing the state to complete their title to lands in Boise Basin, and I think they are trying to obtain private rights on the river. Steunenberg must be careful not to let them get ahead of him in any way. I expect Thornton will reach you before you get this. I did not find any one else who can go out for a few weeks, but about May first expect to have some good man. I judge from what Capt. Henry says that the Boise Basin proposition a very good one.

Yours,

S. G. MOON.”

Q: I show you a letter taken from the files of the Company marked 51 and ask if you received that

(Deposition of S. G. Moon.)

letter from Mr. Palmer at or about its date?

A. Yes.

By Mr. BUNDY.—We offer that letter in evidence.

“Spokane, Washington, April 5, 1902.

S. G. Moon, Esq.,

Eau Claire, Wis.

Dear John: Your letter of the second received. I note what you say re Capt. Henry. Mr. Deary of the Northland Pine Company told me he had estimates on all the State lands along the Payette and that he would be there to bid on it. He also said that Capt. Henry and Turrish would bid, and the Cobban crowd would bid. Was offered three thousand acres Forest Reserve scrip today at six dollars. My impression was it could be bought for \$5.50. Will take the question up with the Governor.

Very truly,

A. E. PALMER.”

Q. I show you a letter taken from the files of the Company marked 73; is that a letter you received from Mr. Palmer on or about its date?

A. Yes, sir.

By Mr. BUNDY.—I offer that letter in evidence. The last paragraph of it reads as follows:

“Spokane, Washington, May 13, 1902.

S. G. Moon, Esq.,

Eau Claire, Wisconsin.

Dear John: Wish you would learn what Forest Reserve Lieu Lands Scrip can be bought for. I cannot learn of any under \$5.50 and that in small

(Deposition of S. G. Moon.)

quantities. At the same time others say it can be had at \$5.25, but I cannot find out. You will see there is a possibility of my paying twenty-five cents or fifty cents an acre more than you might buy it for.

John Hunner claims to have an option on twenty or thirty millions of white pine on Orofino Creek."

Q. I show you a telegram taken from the files of the Company marked number 85; is that a telegram you received from Mr. Palmer on or about its date?

A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence.

"Spokane, Washington, June 25, 1902.

S. G. Moon,

Care Conductor Train No. 1,

Glenwood, Wisconsin.

Bought five thousand at five fifty. Can get five more same price.

A. E. PALMER."

Q. Do you know what that telegram refers to, Mr. Moon?

A. It refers to scrip and indicated that he had bought that five thousand acres at \$5.50 an acre.

Q. And could get more at the same price?

A. Yes, sir.

By Mr. BUNDY.—I read balance of letter 73, dated May 13, 1902:

"Mr. Barber's wire of yesterday and your wire of today received. Will be in Boise on the 16th, address, Idah-ha Hotel. Will likely go directly to timber. There is a lot of fine timber in towns six

(Deposition of S. G. Moon.)

and seven, range four east which I think can be located by scrip; that is why I wired asking when you could come west. If the patents should come soon this land should be taken at once, and it might be more satisfactory if you or Mr. Barber visited the Basin before we laid any scrip. Still I shall proceed with the idea you will take all the good timber you can acquire in the Basin."

Q. I show you letter marked number 91, taken from the files of the Company and which appears to be a copy of a letter written from Washington, D. C., to Mr. Waldo Murphy, Spokane, at the bottom of which is a letter from Mr. Palmer, is it not?

A. Yes, sir.

Q. Did you receive this letter addressed to Mr. Murphy with Mr. Palmer's notation on it, on or about its date?

A. Yes, sir.

By Mr. BUNDY.—We offer this in evidence, this letter of Mr. Palmer's.

By Mr. GORDON.—We object to the copy inclosed upon the ground that it is incompetent, irrelevant and immaterial.

By Mr. BUNDY.—Upon the letter is "S. G. Moon. The above is a copy of a letter re \$4.50 scrip. Think original was from Washington, D. C. A. E. Palmer."

Q. That portion of the letter I have read is in the handwriting of Mr. Palmer?

A. Yes, sir.

Q. And is addressed to you?

A. Yes, sir.

Q. The portion of the letter on the same paper above what Mr. Palmer has written and about which he referred is the following:

(Deposition of S. G. Moon.)

“Washington, D. C. June 25, 1902.

Mr. T. Waldo Murphy,
Spokane, Washington.

Dear Sir: Your telegram saying that you can handle the entire seventy-five thousand acres is just at hand this morning. I will say that I am negotiating for this seventy-five thousand acres, but there is a feature of it I should have written you on in my first letter which was accidentally omitted therefrom.”

(The letter relates to the prices of scrip in large amounts running from \$2.50 to \$4.50 an acre.)

By Mr. GORDON.—The copy of the letter is not signed?

By Mr. BUNDY.—No, not signed.

Q. Now, Mr. Moon, I show you letter-press copy of letter in D. R. Moon book, on page 1285, and ask you if that is a copy of the letter wrote Mr. Palmer on or about the date shown? A. Yes, sir.

By Mr. BUNDY.—I offer this letter in evidence, which reads:

“June 28, 1902.

Mr. A. E. Palmer,
Spokane, Washington.

Dear Al: I have your letters with inclosures and advice of two drafts of \$5005.00 each and one for \$963.55. One of the ones for \$5005.00 has already been paid and the others will be paid when presented. I also have your wire about the five thousand acres of scrip which you bought. The wire came while I was at Gile attending our meeting there. Mr. Barber has a letter from his man offer-

(Deposition of S. G. Moon.)

ing ten thousand acres of scrip at \$4.50. He also states that he has a block of two thousand acres for which he wants \$5.80. He goes on to say in answer to Mr. Barber's letter that the \$4.50 scrip is first class timber reserve land scrip based on bounty claims and in every way the same as that selling for \$5.80, except that it cannot be delivered inside of five or six weeks. We have ordered the ten thousand acres. We are still a bit doubtful over it, but you had better not put in your order for a second five thousand mentioned in your wire until we learn more about this. I inclose herewith a letter from James Hambly. It is in answer to one I wrote to him. He is the man who located the Cobban-Casey timber and I wish you would find out what you can about his reliability and if he seems to be O. K. let him go on with the work Conners is doing and send Conners home to us as I find that we need him badly here.

Q. I show you telegram from files of Company and ask you if that is a telegram you received from Mr. Palmer on or about its date?

A. It is; yes.

By Mr. BUNDY.—No. 102. Reads:

“Spokane, Washington, July 30, 1902.

S. G. Moon,

Eau Claire, Wis.

Bought Stevens six thousand scrip \$5.35. Thirty-one deeds by express tonight.

A. E. PALMER.”

(Deposition of S. G. Moon.)

Q. What does that refer to, "Stevens six thousand scrip"?

A. As I remember it, Stevens is the man who lived out to New Richmond and Palmer got him through Mr. Phipps and bought of him lands for which he paid \$5.35.

Q. I show you a letter taken from the files of the Company and marked 103; is that a letter you received from Palmer on or about its date?

A. Yes, sir.

By Mr. BUNDY.—It is offered in evidence:

"Spokane, Washington, July 30, 1902.

S. G. Moon,

Eau Claire, Wisconsin.

Dear John: Just received your wire 'Phipps says scrip in question is all right and can be located on lands described.' Have bought six thousand acres at \$5.35 from Mr. Stevens subject to it being such scrip as you can use. I may go to Eau Claire soon re this scrip and other matters relating to Steunenberg contract. Connors should be here tonight and Eau Claire Monday. Would suggest that you go over with him all lands he has cruised and decide on those you wish to scrip.

Very truly,

A. E. PALMER."

Q. This scrip referred to in the correspondence to which your attention has been called, Mr. Moon, up to July 19, 1902, is the period covered by that correspondence, related to what kind of scrip and where you intended to use it?

(Deposition of S. G. Moon.)

A. It related to Lieu Lands Timber Reserve Scrip and we intended to use it in the Boise Basin. We were doing this to provide Steunenberg with scrip for him to use and complete his agreement with us.

Q. Now, at the time you made this agreement with Governor Steunenberg, it seems he reported to you that a certain number of acres of land had been acquired and certain other lands had been filed on which he assured you you could purchase; now what, if any, talk did you have with him as to the manner, as to the balance of the Boise Basin lands, were to be acquired?

A. We advised and insisted that the balance of the land should be acquired by scrip.

Q. Was that the intention of you and Mr. Barber to acquire the lands which were not entered at the time of the agreement, by the use of scrip?

A. It was. It was our intention. I understood so by him.

Q. So that the Steunenberg contract covered twenty-five thousand acres and was entirely a scrip proposition, except the lands they had already acquired and which had already been segregated by timber and stone entries?

A. That is true.

Q. Now, Mr. Moon, you went out to Idaho sometime in the month of May or June, 1902, on your first trip?

A. Yes, sir.

Q. While there did you learn of the fact that some order had been made directing the issuing of titles, patents, or did you hear that discussed at that

(Deposition of S. G. Moon.)

time?

A. I don't remember that I heard that discussed. We learned, however, about that time, that there had been an order to that effect. I don't remember whether I learned about it when I was there or after I got home, but probably while I was there.

Q. No titles were acquired or deeds taken by Mr. Palmer for you or anyone until sometime in June, 1902?

A. No, sir; about that time, I think in June, 1902, we began. He began to make drafts on us to pay for titles.

Q. Now, you look at Mr. Palmer's account and can you state from that when he began drawing on you for money with which to take up titles?

A. June 26th is the first.

Q. June 26th, 1902, was the first five thousand dollar draft? A. Yes, sir.

Q. And the money which you sent Mr. Palmer for the purpose of taking titles after the first two or three checks was pretty nearly all sent in five thousand dollar drafts, was it not?

A. As I remember it, yes.

Q. Now, I show you a letter taken from the files of the company, No. 68, and ask you if that is a letter you received from Mr. Palmer in due course of business? A. Yes, sir.

Q. I will ask you as to whether or not there was attached to it that letter?

A. I think it was; I don't know positively.

(Deposition of S. G. Moon.)

By Mr. BUNDY.—We will offer this letter in evidence. It reads:

“Spokane, Washington, May 10, 1902.

S. G. Moon, Esq.,

Eau Claire, Wisconsin.

Dear John: Herewith I hand you list of first lands cruised by Thornton. The lands which do not check with our lands I imagine are state or government lands as he has a plat of them all. While his report was not very plain to me, I suppose it is similar to reports he had made to you before. Am sending him a form as you suggested. Steunenberg has phoned me he thinks patents are at Boise Land Office and is to wire me as soon as he knows positively, and I will go down to Boise.”

Attached to it is this letter:

“Caldwell, Idaho, May 4, 1902.

Pursuant to your request, telephone Friday, I send to you herewith contract; also, warranty deed from Keene with final receipt. This latter must be returned to me at once. Am needing it in matters before the local land office. The regulations require its surrender when patent is delivered. Deeds pass, however, in this country on this receipt, on all kinds of entries. I have personally sold under pre-emption and timber acts upon issuance of final receipt. Under the laws of Idaho and department regulations the lands becomes subject to disposal upon issuance of this receipt. In the absence of contest it is regarded as a perfect title. Inclose you letter from

(Deposition of S. G. Moon.)

Taylor. Hope you will take it as I had to reject offer from Chicago last week. Could not talk with them while acting with you.

With regards,

FRANK STEUNENBERG."

By Mr. BUNDY.—The above letter is written on the stationery of A. E. Palmer and purports to be a copy of a letter from Steunenberg to Palmer.

Q. The letter I have just read you from Mr. Palmer I will ask you whether or not that was the first intimation that you had that deeds were about to issue? A. Yes, sir.

Q. I show you a letter taken from the files of the company marked 1297 with a rubber stamp mark of your company showing it was received May 16, 1902; I will ask you whether or not that letter was received at your office on that date as appears by notations upon it? A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence. Letter reads:

"May 14, 1902.

James T. Barber,

Eau Claire, Wis.

Dear Sir: Inclosed please find copy of telegram by me sent to Mr. Palmer this morning.

Yours truly,

T. F. FRAWLEY."

Telegram attached and marked received at same time, May 16, reads as follows:

(Deposition of S. G. Moon.)

“Eau Claire, May 14, 1902.

A. E. Palmer,

Spokane, Washington.

Take all deeds warranty in form and then convey by like deed and form to James T. Barber and Sumner G. Moon. Express full consideration in each instance.

T. F. FRAWLEY.”

Q. That seems to be addressed to Mr. Barber; do you remember any conversation with Mr. Frawley on that subject?

A. I do not remember anything definitely about it; but evidently we referred it to Mr. Frawley. Refers to Keene or a remark of Mr. Palmer asking advice as to how deeds should be drawn; I don't remember definitely.

Q. In so far as the purchase of lands in the Boise Basin was carried on during the summer of 1902 or at any time, did you give it any personal attention, Mr. Moon? A. No, sir.

Q. Did you at any time have any negotiations at any time with any entryman? A. No, sir.

Q. Did you depend entirely upon your contract with Governor Steunenberg as to these lands?

A. We did; yes, sir.

Q. Did the Steunenberg contract cover lands subsequently acquired in Crooked River and other territory? A. No, sir.

By Mr. BUNDY.—Do you remember Keene? That was the first deed taken?

By Mr. GORDON.—Yes.

(Deposition of S. G. Moon.)

Examination adjourned to ten o'clock A. M., May 11, 1909, at this office.

May 11, 1909, ten o'clock A. M., examination resumed pursuant to said adjournment.

(By Mr. BUNDY.)

Q. Mr. Moon, we got down last night to sometime in June, 1902, when you testified that Mr. Palmer began drawing on you for funds with which to buy lands; I will ask you if after you began sending money in June, Mr. Steunenberg began to take deeds?

A. Yes.

Q. And began to report from time to time that he had acquired so many deeds from entrymen?

A. Yes, we got such reports from Mr. Palmer.

Q. I will ask you if at the time you began taking these deeds, any patents had been issued?

A. Not any that I know of.

Q. You testified that the original arrangement with Governor Steunenberg was that he was to take deeds from the entrymen after patents issued; now what and when was the change of plans made, if you know, with reference to taking deeds before patents?

A. He seemed to change the plan at the time he sent the first deed for the Keene entry; I think it was sometime in May. The first that we knew of his change was at the time he sent the Keene deed, and as I remember it, we took the matter up with Mr. Frawley and I think he advised that in his opinion a deed based upon final receiver's receipt was good. However, I think we did have different information from that, but finally were convinced that deed on

(Deposition of S. G. Moon.)

final receipt was good.

Q. Do you recall that sometime, as a reason for his change of base, Governor Steunenberg furnished you a written opinion of Senator Borah?

A. Yes, sir; I remember that. Senator Borah's opinion was, as I remember it, that a deed based upon final receiver's receipt was good title.

Q. Now, Mr. Moon, up to that time, did you know anything about temporary receipts having been issued for these Basin entries?

A. No, sir; neither then nor did I learn of it afterwards until you told me after you had been to Boise on this case.

Q. After I had been to Boise at the trial of Senator Borah in September and October, 1907?

A. Yes, sir.

Q. I also neglected to ask you about Frank Martin, one of the parties mentioned in this complaint and who was indicted with you; do you know Frank Martin, Ex-Attorney General of Idaho?

A. Yes, sir; I have met him.

Q. Where did you first meet him?

A. In Madison, at a hearing we had there of removal proceedings.

Q. Something about a year ago?

A. About a year ago.

Q. Last August? A. Yes, sir.

Q. Prior to that time you had ever met him?

A. No, sir.

Q. Did you ever, at any time, have business relations with him? A. No, sir.

(Deposition of S. G. Moon.)

Q. Any correspondence with him to acquire lands in Idaho?

A. No, sir; I don't remember of hearing of him until I read an account of his indictment with us.

Q. Mr. Moon, was the money which was used for the purchase of the original Basin lands and entries in the Boise Basin all remitted by you and Mr. Barber or the company to Palmer in the first instance?

A. Yes, sir.

Q. And by Palmer turned over to Steunenberg?

A. Yes, sir.

Q. Was there any reason for sending the money to Palmer except as shown by your letter of instructions to him and his agreement to be responsible for the proper disbursement of your money?

A. No, sir.

Q. Mr. Palmer had no interest in it himself?

A. No, sir.

Q. The moneys other than the moneys sent out pursuant to the Steunenberg contract were not sent to Palmer in the Crooked River and town six, range four matters?

A. No, sir; it seems to me that at sometime between the time that Mr. Palmer quit attending to our matters and before Mr. Chapman went out there, we may have sent Steunenberg some money; I am not positive about that.

By Mr. GORDON.—Was that in the Basin entries?

A. I have no definite recollection about it, but it seems to me that at sometime after December, 1902,

(Deposition of S. G. Moon.)

which I think was the time we settled with Palmer, and before Mr. Chapman went out there, we may have honored drafts from Steunenberg on his contract, but I won't be sure about that, but the books will show.

(By Mr. BUNDY.)

Q. State, Mr. Moon, as to what personal attention you gave to the purchase of lands by Steunenberg under his contract; how you treated that contract?

A. I gave no personal attention to it; depended upon Mr. Palmer to follow instructions in checking up the moneys which went to Steunenberg and depended on Steunenberg's contract, the contract we had with Steunenberg.

Q. Mr. Steunenberg guaranteed the titles?

A. He guaranteed the titles.

Q. Mr. Moon, it appears in the evidence taken in this case, that a large number of the timber and stone entrymen in the Basin procured money with which to make final proofs from one John I. Wells; I will ask you if you were informed of that fact or knew of it prior to the trial of this case? A. No, sir.

Q. Were you advised by anyone, by Steunenberg or anyone else that Sweet was furnishing money to Wells for these entrymen before you were informed by me at the time that this case was being tried?

A. No, sir.

Q. At the time you made the contract with Steunenberg here at Eau Claire were you advised of any facts relative to Steunenberg or Sweet or Wells, or

(Deposition of S. G. Moon.)

Kinkaid, or Pritchard, or Downs, or any other person, having procured timber and stone entrymen to make entries, or assist them in a financial way in making final proofs? A. No, sir.

Q. I show you, Mr. Moon, two sheets of paper, at the bottom of which is a letter purporting to be written by A. E. Palmer, and taken from the files of the company, and ask you if that letter at the end is in the handwriting of A. E. Palmer? A. Yes, sir.

Q. And is a letter received by you or your company at the time indicated by the rubber-stamp mark, April 4, 1904? A. Yes, sir.

Q. And the balance of that document is in whose handwriting? A. Mr. Cotton's.

Q. Put on the record who Mr. Cotton is and his duties.

A. Mr. Cotton is the cashier of the Northwestern Lumber Company. The books of the company are kept under his direction. He also kept the books of the Barber Lumber Company while they were kept at our office.

Q. And he is your general auditor in lumbering, railroading, and other operations?

A. Yes, sir.

Q. This statement which I have shown you and which is marked 119½ in blue pencil, purports to be an account of A. E. Palmer with the Barber Lumber Company down to the signature of Mr. Cotton, showing a balance of account for, of \$714.02 to be accounted for. Then follows a letter of Mr. Palmer in which he accounts for that amount, does he not?

(Deposition of S. G. Moon.)

A. Yes, sir.

Q. Will you step to the ledger of the Barber Lumber Company and advise me if the last entry charged to Mr. Palmer is the \$714.02 which he had not accounted for before? A. Yes, sir.

Q. Was he given credit on April 11, 1903, for the \$714.02, which he had not accounted for before?

A. Yes, sir.

Q. Now, is this document, No. 119 $\frac{1}{2}$, a true and correct statement as shown by the reports of Palmer and the books of the Barber Lumber Company of the disbursements of money on this Steunenbergl contract? A. Yes, sir.

By Mr. BUNDY.—We will offer that in evidence as supplementary statement made at Boise which included part, but not all, of disbursements and receipts.

It reads as follows:

(Deposition of S. G. Moon.)

Eau Claire, Wis., Dec. 26, 1903.

A. E. Palmer,

In % with Barber Lumber Co.

1902.								
Apr.	17.	To cash pd. your draft on B. & M..	\$38763.75	cr. me	38.76			
	17.	" " " " " " " " " "	1201.20	" me	1.20			
	29.	" " " " " " " " " "	826.00					
May	8.	" " " " " " " " " "	250.25		.25			
June	26.	" " " " " " " " " "	5005.37		5.37			
	30.	" " " " " " " " " "	963.55					
July	1.	" " " " " " " " " "	5053.00		53.00			
	3.	" " " " " " " " " "	5005.00		5.00			
	9.	" " " " " " " " " "	5005.00		5.00			
	14.	" " " " " " " " " "	5005.00		5.00			
	22.	" " " " " " " " " "	130.70	cr. me. per letter				
	30.	" " " " " " " " " "	10010.00		10.00			
Aug.	9.	" " " per S. G. Moon.....	40.00	cr. me pd. by de-				
				ducting from				
	II.	" " " paid your dft.....	10010.00	dft. see letters	10.00			
	II.	" " " " " " " " " "	161.75	cr. me per let-				
				ter.				
Sept.	23.	" " " " " " " " " "	186.55	cr. me per let-				
				ter.				
Nov.	4.	" " " Sent your N. Y. dft.....	3000.00					
Dec.	3.	" " " 3 N. Y. Dfts \$2000.00 each..	6000.00					
					96617.12			

CREDITS.

1902.								
April	10.	By cash pd. F. Steunenberg—ck.	1008..	\$5800.00	5.80			
	11.	" " " " " " " " " "	1009..	1200.00	1.20			
	25.	" " " " " " " " " "	1016..	826.00				
May	2.	" " " " " " " " " "	1023..	250.00	.25			
June	16.	" " " " " " " " " "	1056..	5000.00	5.37			
	25.	" " " " " " " " " "	1060..	5000.00	5.00			
	26.	" " " " " " " " " "	1063..	5000.00	5.00			
	30.	" " " " " " " " " "	1068..	5000.00	5.00			
July	7.	" " " " " " " " " "	1074..	5000.00	5.00			
	21.	" " " " " " " " " "	1080..	10000.00	10.00			
Aug.	15.	" " " " " " " " " "	1096..	5000.00	5.00			
Oct.	31.	" " " " " " " " " "	1133..	3000.00				
Dec.	2.	" " " wired from New York	..	6000.00				
Apl.	10.	" " " Wm. Sweet ck. 1007—	21950.00..	32925.00	32.95			
				10975.00				
Nov.	14.	" " " returned to us—being part of						
		amount pd. you Aug. 11/02..	5000.00		5.00			
		By Cash paid men viz:						
Apl	2.	ck. #1000.....	\$ 17.00					
	4.	" " 1003.....	65.75					
	10.	" " 1029.....	16.10					
May	10.	" " 1030.....	25.00					
	10.	" " 1031.....	25.00					
	10.	" " 1033.....	44.75					
June	9.	" " 1046.....	213.00					
Forward.....					406.60	95001.00	96617.12	

(Deposition of S. G. Moon.)

5.00—Letter advising you of dft. will show you what dif. (48.00) is
(My Bank Book shows \$5000.00 only. P.)

A. E. Palmer a/c. Continued.

1902.		Forward.....	\$406.60	95001.00	96617.12
June 14.	By	Cash—ck #1049.....	54.50		
14.		" 1050.....	33.75		
14.		" 1051.....	25.00		
14.		" 1052.....	25.00		
14.		" 1053.....	50.00		
16.		" 1055.....	43.50		
July 3.		" 1073.....	90.20		
14.		" 1076.....	40.50		
31.		" 1086.....	86.50		
Aug. 13.		" 1094.....	46.55	902.10	95903.10

Balance to account for.....		714.02
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Cotten.

Cr. me drafts.....	\$963.55		
"	130.70		
"	161.75		
"	186.55	\$1,442.55	
Less your cr. pd. men.....		902.10	540.45
Cr. me dif. in your chge. 7/1...		53.00	540.45
less included in my exch. a/c....		5.00	48.00
Cr. me \$40.00 rec'd. from S. G.			
M. this amt. was deducted from			
a subsequent dft—letters should			
show it.....			40.00
Cr. me—exchange 1/10 of 1% on			
drafts about.			85.57
			<u>714.02</u>

Mr. COTTEN.—Not having my letter-book or checks here, I can explain difference from this stmt, & my Bank Book & memory only. It seems to balance & if you will look up my letters advising you of dfts., they will explain what was for labor, personal exps., also the \$40.00 chge. I gave C. B. Connors \$75.00 in c'y, & P. Downs about \$30.00. My stmts. should show what all chges. were for, Spokane Bank chg'd me 1/10 of 1% on all dfts. I cannot explain the \$88.00 dif. in memo., left Mr. Moon unless I made

(Deposition of S. G. Moon.)

a mistake & from this stmt, it would appear I did.

Very truly,

A. E. PALMER."

Q. Mr. Moon, when this Steunenberg contract was first entered into and you and Mr. Barber first became interested in Idaho lands, state whether or not it was the intention to confine it to the Boise Basin lands?

A. Our first intention was to confine it.

Q. And what was your intention at that time with reference to the plant, the capacity of the plant you were to build?

A. We had, as I remember it, no definite intention or plan as to a plant when we made the contract with Steunenberg. We didn't know whether we would treat it as a speculation or whether we would develop it; but soon after that, after we thought we would get in the neighborhood of two hundred million feet of timber, we planned to buy a mill from the Montreal River Lumber Company, at Gile, Wisconsin, in which company we were interested, and who were through sawing. We thought we could move that mill out there and put it up at a cost somewhere between twenty-five and fifty thousand dollars, I think, and that would have been a sufficient mill for that amount of timber.

Q. State as to what has been the tendency of the proposition as soon as you started, as to whether it has grown beyond expectations?

A. Yes, we continually heard of other timber on the north and south forks of the Boise River, and

(Deposition of S. G. Moon.)

thought that a good deal of that might be acquired, and that Boise was the proper place to manufacture all of that timber.

Q. I will ask you what was the original stock of the Barber Lumber Company?

A. One hundred and fifty thousand dollars.

Q. Has that been from time to time increased to keep up with the changed plans and necessities of the business?

A. Yes, sir.

Q. What is its present capital?

A. Its present capital is a million and a half and an increase to that of five hundred thousand has been voted and a large part of it subscribed and one assessment, I think of thirty per cent paid in.

Q. When did you first go to Idaho, Mr. Moon?

A. In June, 1902.

Q. And how many trips did you make there during that year?

A. Two.

Q. And when did you go to Idaho again?

A. I went to Idaho again, I think the last part of August, 1902, the latter part of August, 1902, or the first of September; I was there about the first of September, 1902.

Q. Those were the two trips in 1902?

A. Yes, sir.

Q. When were you there again?

A. I think it was in February, 1905.

Q. And have you been there since?

A. Yes, sir; I was there also once or I think possibly twice in 1906.

Q. Now, this first visit you made there in June,

(Deposition of S. G. Moon.)

1902, how long were you there then?

A. I think about two weeks.

Q. What were you doing there that time?

A. Well, principally looking up timber; the purpose of the trip was to first go up into the timber, see the timber and see the condition of the streams up in the Basin and then after that I spent some time in investigating the condition of the river at Boise, both above and below the city with reference to a feasible location for a manufacturing plant.

Q. Mr. Moon, at that time did you have any talk with any person with reference to locating timber and stone men on timber and stone lands?

A. No, sir.

Q. Did you at that time have any talk with them?

A. No, sir.

Q. Did you at any time authorize any person on behalf of yourself or Mr. Barber or the Barber Lumber Company to solicit or procure people *people* to make stone and timber entries? A. No, sir.

Q. Did you authorize Stunenberg or any other person or advance money to them for the purpose of proving up or procuring title?

A. No, sir.

Q. Did you have any knowledge of any money belonging to the Barber Lumber Company or yourself or Mr. Barber being so used, if it was so used?

A. No, sir.

Q. I want to introduce some letters relative to the purchase of these Basin entries. I show you a letter marked 89 and ask you if that is a letter re-

(Deposition of S. G. Moon.)

ceived by you from Mr. Palmer?

A. Yes, sir.

Q. And he says in there he encloses a copy of a letter from Steunenberg, and I ask you if that is a copy of the letter sent to you by Palmer?

A. Yes, sir.

By Mr. BUNDY.—We offer this in evidence which reads:

“Spokane, Wash., June 30, 1902.

S. G. Moon,

Eau Claire, Wis.

Dear John: I enclose copy of letter from Stunenberg re patents. Send me check for five thousand dollars. If patents begin to issue, I will go to Boise.

Very truly,

A. E. PALMER.”

A copy of the letter received and which is attached, reads as follows:

“Sho Shone, Idaho, June 28, 1902.

My Dear Palmer: In response to a telephone communication from Boise yesterday that entries were being opened up, I send Kinkaid five thousand dollars to take care of the situation until my return Monday; I am going to Ketchum today to load a lamb shipment for Chicago. Did intend to go with them, but anticipating that entries would soon be approved, have concluded to remain. Please send me five thousand dollars to cover advances made yesterday; I will send statement of expenditure early

(Deposition of S. G. Moon.)
next week.

Sincerely yours,

FRANK STUNENBERG."

Q. I will ask you if you learned some time in some manner that Mr. Stunenberg in carrying out his contract with you in buying these lands, had employed a man by the name of Kinkaid, and if so when did you learn it?

A. I don't remember just when I learned that Kinkaid was employed in the matter, nor do I know definitely what his connection with Mr. Stunenberg was, but some time, I think on a trip to Boise, or possibly through some correspondence, I learned that there was a man Kinkaid who was some sort of an agent of Steunenberg or was selling Steunenberg titles. I don't know when I first learned that.

Q. Did you have anything to do, directly or indirectly, with the employment of Kinkaid?

A. No, sir.

Q. Do you know anything about the terms upon which he was employed? A. No, sir.

Q. Ever have any correspondence with Kinkaid?

A. No, sir.

Q. Ever furnish him with money or do any business with him at all? A. No, sir.

Q. Did Mr. Kinkaid at any time with reference to this Boise Basin have any contract with you or Mr. Barber or the Barber Lumber Company?

A. No, sir.

Q. Did you have any arrangements with any person, except the contract with Steunenberg in evi-

(Deposition of S. G. Moon.)

dence, and with Palmer, with reference to the Basin entries? A. No, sir.

Q. Were all the Basin entries acquired during the fore part of 1902, secured under the Steunenberg contract, in that way? A. Yes, sir.

Q. I show you a letter taken from the files of the Company, marked No. 96, and ask you if that is a letter received by you from Mr. Palmer in this matter? A. Yes, sir.

By Mr. BUNDY.—Attached to it is a Dennis Thornton expense account, we offer 96 in evidence, which reads:

“Spokane, Wash., July 15, 1902.

S. G. Moon, Esq.,

Eau Claire, Wis.

My Dear John: I am drawing on you for \$130.70 in payment of C. B. Conner's expense account, per enclosure, \$90.20, Dennis Thornton's expense account, per enclosure \$40.50, total \$130.70.

Have heard nothing from Hambly so will send you Conners in about ten days. Think Thornton can keep up with the work now, owing to the delay in patents; I telephoned the governor yesterday, that he must send me deeds as fast as he takes them; Am going to Portland to-night to see about scrip and am going on to Boise; I enclose Thornton's estimate on State lands 6-5 east.

Your wire of yesterday and letter of the 12th received; the only reports I am short are Thornton's second and third reports; was a little afraid to buy

(Deposition of S. G. Moon.)

scrip until you had run down the \$4.50 offering.

Very truly,

A. E. PALMER.”

There is a lot of expense accounts attached to these items. I show you copy of a letter in the D. R. Moon copy-book, page 1303; is that a copy of a letter you wrote Palmer on or about that date?

A. Yes, sir.

Mr. BUNDY.—We offer that in evidence, which reads:

Eau Claire, Wis., July 17, 1902.

Mr. A. E. Palmer,

Spokane, Washington.

Dear Al:—I got a wire from Steunenberg a few days ago namely: “Situation here most satisfactory and party is recalled. What is the news?”

I presume that means that the final receipts and patents on all the lands will be forth coming at once and you will be taking deeds. We have organized as Barber Lumber Company at Eau Claire, Wisconsin, and think you had better take the deeds from the entrymen in your name and have them recorded; then you in turn deed to the Barber Lumber Company. I don't think it would be advisable for us to have these deeds go on record for the present. Do you?

I find that there were three or four letters sent to me, care of Idah-ha, Boise which I never got. Would you mind asking at the hotel the next time you go to Boise, if they received any mail for me

(Deposition of S. G. Moon.)

after I left, and if so what they did with it.

Yours truly,

S. G. MOON.

P. S. I enclose copy of letters which Mr. Barber has today written to Steunenberg."

Q. Mr. Moon, with reference to that telegram "Situation here most satisfactory and party is recalled. What is the news?" Do you recall the incident?

A. Yes, sir.

Q. Do you know to what the telegram referred?

A. Why, Steunenberg as I remember it stopped here on his way east, saying that there was a general suspension of timber and stone entries and that there was a special agent, I think it was or some land office man from Washington at Boise, and that he was going down to Washington, as I remember it to try and find out why he was there and when he would be likely to be recalled.

Q. Do you recall the fact that an order had been made in June or May some time modifying this general order?

A. I have no definite recollection on that subject.

Q. This letter is dated July 17, 1902; now was it at or about that time that you first heard about this general suspension order that was in force?

A. The first I remember this—I don't remember having heard of it until Steunenberg went there, although he may have written about it before. Was that telegram from the east?

Q. I don't know, it was just a telegram you re-

(Deposition of S. G. Moon.)

ferred to.

A. I have forgotten about that.

Q. Do you recollect of learning at that time or any time of this suspension order having been modified or vacated? A. Yes, sir.

Q. Do you recollect that the Boise land office had still refused to issue final receipts so long as their particular office was under investigation?

A. Yes, sir, as you speak of it, I now remember; it seems to me early in June some time I heard that; I may not have heard that at that time but I heard I think, early in June that the order was suspended, but the Boise land office did not issue our patents and Steunenbergh went to Washington, I think to see why that was; that is my recollection; that was my understanding of the telegram when it came.

Q. Had you any personal knowledge of the situation at the land office as to the orders that were made or vacated; did you have any knowledge of any timber inspector being there, except what Steunenbergh told you? A. No, sir.

Q. Nor for what purpose he was there?

A. No, sir; I understood that it was a general order and not confined to that locality.

Q. You say in this letter that "You had better take deeds from entrymen in your name and have them recorded, then you in turn deed to the Barber Lumber Company. I don't think it would be advisable for us to have these deeds to go on record for the present." What deeds were these?

A. These were the deeds from Mr. Palmer to the

(Deposition of S. G. Moon.)

Barber Lumber Company.

Q. Why, Mr. Moon, did you think it was not desirable to have these go on record at that time?

A. We didn't want to advertise the fact that the Lumber Company was collecting the lands in the Boise Basin.

Q. Why didn't you want to advertise that fact?

A. Because that would tend to make the price of timber advance considerably.

Q. Did you have any other motive or reason other than that? A. No, sir.

Q. I show you a telegram taken from the files of the Company; 99 is that a telegram you received from Mr. *Paler* on or about that date?

A. Yes, sir.

By Mr. BUNDY.—That is offered in evidence and reads as follows:

“Nampa, Idaho, July 26.

S. G. Moon, Eau Claire, Wis.

Have 30 deeds and 14 more left with S. Spokane to-morrow.

A. E. PALMER.”

Q. Was that the first report of deeds having been taken, Mr. Moon, or was there any before that?

A. I don't remember, I think it was.

Q. I show you a telegram marked No. 102; was that received by you from Mr. Palmer on or about that date?

A. I don't remember, I think it was.

Q. I show you a telegram marked No. 102; was

(Deposition of S. G. Moon.)

that received by you from Mr. Palmer on or about that date? A. Yes, sir.

Mr. BUNDY.—It is offered in evidence and reads:

“Spokane, Wash., July 30, 1902.

S. G. Moon,

Eau Claire, Wis.

Bought Stevens 6000 scrip \$5.35. 31 deeds by express to-night.

A. E. PALMER.”

Q. That expression 31 deeds by express tonight indicated to you that he was sending you 31 deeds by express? A. Yes, sir.

Q. Was that the manner in which deeds were taken, Mr. Stunenberg taking them to Palmer and Palmer paying him for them out of funds provided for such purpose, and Palmer sending them to you?

A. Yes, sir.

Q. And deeds were kept here as fast as sent?

A. For a time until an office was established in Boise.

Q. Deeds were not sent directly by Gov. Steunenberg to you then? A. No, sir.

Q. I show you a copy of letter found on page 1401 of the D. R. Moon copy-book; is that a copy of a letter written and mailed by you to A. E. Palmer?

A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence and reads as follows:

(Deposition of S. G. Moon.)

“Eau Claire, Wis., Dec. 17, 1902.

A. E. Palmer,

Hotel Imperial, New York.

Dear Al: I have your letters of the 14th inst. I note what you say about Trinity Mining Stock and have referred it to Mr. Barber and Chess. We don't feel any of us that we are in a position to go in, but thank you for the chance. Chess expects to be in New York at the Holland on Dec. 23, I also note what you say about suspended entries being released, I sincerely hope it is no mistake so that Stunenberg can go on and acquire land in accordance with his contract and we can record our titles. The Boise & Caldwell papers came out a few days ago with head lines clear across the paper, stating that Scofield was buying timber up in the Basin, and was about to begin a plant at Boise, which would cost nearly a half a million dollars. I am afraid that will hurt us some.

Yours,

S. G. MOON.”

Q. I now show you a document taken from the files of the Company marked 119, and ask you if that is the receipt of A. E. Palmer for money paid him for his services as provided under the Steunenberg contract? A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence and reads as follows:

(Deposition of S. G. Moon.)

May 6th, 1903.

Received of Barber Lumber Company twenty-five hundred dollars (\$2500.00) in full for services to date.

A. E. PALMER."

Q. Now prior to the execution of that receipt in May, 1903, Mr. Palmer had completed his work entirely, had he not? A. Yes, sir.

Q. And so far as the Basin entries were concerned and the Steunenberg contract were completed, so far as it is completed, except so far as the 6-4 land afterwards acquired?

A. Yes, sir.

Q. By referring to the money furnished to Mr. Palmer, can you tell the month in which the most of his work was done for you?

A. In December, 1902.

Q. In December, 1902, he wired \$6000.00 to Governor Steunenberg from New York, didn't he?

A. Yes.

Q. And drew drafts on you from New York for that amount? A. Yes, sir.

Q. That is the last item of either receipts or disbursements by Mr. Palmer in this matter, was it not?

A. Yes.

Q. And with the close of his business in December, 1902, it closed the purchase of the Basin Lands under the Steunenberg contract, with the exception I believe, of two or three claims that were purchased some time afterwards?

A. As I remember; yes, sir.

(Deposition of James T. Barber.)

Q. Now, Mr. Moon, we will take Mr. Barber for a time; you will step one side, please.

[Deposition of J. T. Barber, on Behalf of the Defendants (Recalled).]

J. T. Barber, recalled for examination, testified as follows:

(By Mr. BUNDY.)

Q. I neglected to ask you about Frank Martin, and if you know him and where you met him?

A. The first time I ever saw Frank Martin was in Madison last August, I think.

Q. Did you ever have any business relations with him of any kind or character?

A. None, whatever.

Q. Or any correspondence with him?

A. None, whatever.

Q. He was at Madison last August as a witness in certain removal proceedings?

A. Yes, sir.

Q. Mr. Barber, at the time Gov. Steunenberg was here at Eau Claire, and up to that time, had you heard what is spoken of here as temporary receipts being issued to stone and timber entrymen, who had made final proofs?

A. No, sir.

Q. Will you tell how and when you first learned of the fact that temporary receipts had been issued?

A. When you returned from Boise, where you had been attending the Borah trial, was the first I ever heard of any temporary receiver's receipts in the land office.

Q. Did you know, were you advised at the time you made your arrangement with Mr. Steunenberg

(Deposition of James T. Barber.)

or the time you purchased Sweet's interest, that any money had been advanced by Steunenberg or Sweet or anybody else to the entrymen who had made final proofs at that time? A. No, sir.

Q. Did you personally or as an officer of the Barber Lumber Company at any time authorize Steunenberg, Palmer or anyone else to advance money to people with which to make final proofs on timber and stone claims? A. No, sir.

Q. Or for the purpose of meeting their expenses?

A. No, sir.

Q. Did you at any time ask or solicit any person to make timber and stone claims in Idaho or elsewhere? A. No, sir.

Q. Did you at any time authorize Steunenberg, Palmer or any of your employees or agents to make such solicitation? A. No, sir.

Q. When did you first learn that the original plan of not taking deeds until the patents were issued was changed and deeds were to be taken on final receipt; about when I mean?

A. Why, about some time in June, 1902.

Q. At the time, about the time the first deeds were taken and reported here?

A. Yes, sir.

Q. Now, prior to the time deeds were taken by Gov. Steunenberg from entrymen and that fact reported to you, did you know that deeds were to be taken on final receipt? A. No, sir.

Q. I will ask you as to whether or not that question of taking deeds on final receipt, was discussed

(Deposition of James T. Barber.)

between you and Gov. Steunenberg, and you and other people as to the advisability and legality of taking such deeds?

A. I don't remember any particular discussion of that question.

Q. Do you remember that Gov. Steunenberg furnished to you the written opinion of Senator Borah on the question? A. Yes, sir.

Q. I show you a document written on the back "Opinion of W. E. Borah" and ask you if that is the opinion which Gov. Steunenberg delivered to you as the opinion of W. E. Borah?

A. Yes, sir, it is.

Q. You know the signature of Senator Borah, do you not? A. Yes, sir.

Q. That is his signature? A. Yes, sir.

Q. I offer it in evidence; it reads as follows:

Boise, Idaho, July 25, 1902.

Hon. Frank Steunenberg,
Caldwell, Idaho.

Dear Sir: Referring to the effect of the receiver's receipt or certificate of purchase issued by the receiver upon proof and payment of those seeking title to public lands and as to whether or not thereafter the purchaser owns title in the sense that he may transfer the same and deal with the property as his own, etc., will say that in my opinion there can be no question but what the purchaser has a perfect right thereafter to deal with the property as his own. After proof and payment is made the property becomes private property and the individual has a

(Deposition of James T. Barber.)

right to deal with it as such. The Government has no further interest in it, and the mere formal issuing of the patent is not necessary at all in order to give the purchaser a right to deal with the property. In the case below which was by Judge Sawyer I find this language:

‘The purchaser became the equitable owner of the land the moment he entered and paid for it and received a certificate of purchase. From that time the United States had no real interest in the land. It only had the dry legal title in trust for the purchaser pending the usual necessary delay in issuing patents and the patent owner perfected the title the right to which had already vested. The lands ceased to be public lands when entered and paid for. When the patent finally issued it attaches itself to the entry and relates to the date of entry. It is regarded for the purpose of protecting the rights of the patentee against the party seeking to acquire intervening rights as it issued at the date of entry. The entry and patent are regarded as one title.’

P. C. M. Co. vs. Spargo, 16 Fed. 349.

The supreme court of California has said, ‘If any of the claimants have paid to the proper officer of the United States the purchase money for the lands, the lands so paid for are clearly subject to taxation as lands, although the patent might not have been issued. By the payment and acceptance of the purchase money the claimant has performed everything to be done by him and the purchase has been completed. The payment, receipt of the purchase

(Deposition of James T. Barber.)

money and the issuing of the receipt and certificate of entry therefor constitute an entry of the land. The contract of purchase is executed and the land is his and no longer belongs to the Government. The conveyance has not been made but the Government of the United States only holds the legal title in trust for the purchaser. The land no longer constitutes a part of the public domain. The United States has ceased to have any proprietary interest in it. It is henceforth private property.'

People v. Shearer, 30 Cal. 648.

The Supreme Court of the United States has repeatedly approved this doctrine and in the case below it said:

'When the land was purchased and paid for it was no longer the property of the United States, but of the purchaser. He held for it a final certificate which could no more be cancelled by the United States than a patent. It is said the fee was not in the purchaser, but in the United States until the patent shall be issued. This was technically so in law but not in equity. The lands in the hands of the purchaser as real estate, descends to his heirs, etc.'

Carroll v. Safford, 3 Howard U. S. 459.

Huseman v. Durham, 165 U. S. 665.

'According to the well-known proceeding at the land office, if the party is entitled by law to enter the land the receiver gives him a certificate of entry reciting the facts by means of which in due time he receives a patent. The contract of purchase is

(Deposition of James T. Barber.)

completed when the certificate of entry is executed and delivered therefor and the land ceases to be a part of the public domain. The Government agrees to make over the conveyance as soon as it can, in the mean time holds the naked legal fee in trust for the purchaser who has the equitable title. As the patent emanates directly from the president it necessarily happens that years elapse before in the regular course of business in the general land office it can issue, etc. * * * in either case (cash entry or donation) when the entry is made and certificate is given the particular land is segregated from the mass of public lands and becomes private property.'

Witherspoon vs. Duncan, 71 U. S. 341.

The following cases also support this rule:

Bagnell vs. Broderick, 13 Peters, 450.

Gibson vs. Choteau, 13 Wallace, 93.

Shepley vs. Cowan, 91 U. S. 337.

Qwinne vs. Niswanger, 15 Ohio, 368.

Astrom vs. Howard, 3 McLean, 108.

Smelting Co. v. Kemp, 104 U. S. 647.

I think there can be no doubt that the rule is well established that when the certificate of purchase is made, the property becomes private property and subject to the absolute disposition of the owner.

Very respectfully,

W. E. BORAH.

Q. Up until the time when deeds began to be taken and Mr. Palmer began drawing on you for money for the purpose of taking deeds, had you been advised of any change in the plan as origi-

(Deposition of James T. Barber.)

nally outlined, that deeds were not to be taken until patents issued? A. No, sir.

Q. Now, Mr. Barber, state as to whether or not you gave the matter of procuring title in the territory covered by Gov. Steunenberg's contract any particular or detailed attention?

A. No, sir, I did not.

Q. State why, please?

A. I felt that the contract we had with Steunenberg was sufficient for our own protection, contract required him to do certain things, he agreeing to do them and we simply left the matter entirely to him and relied on the contract.

Q. State how you regarded Gov. Steunenberg from what information you had relative to him?

A. We had the highest opinion of Gov. Steunenberg, it has already gone into the record what Mr. *Camel* said about him and what Mr. Palmer said about him. Individually I made some investigation and from the report I got, was of the highest character.

Q. State how he impressed you personally, Mr. Barber?

A. I was very agreeably impressed with him. I think he was very aptly described by Mr. Wallace of the Mountain Building and Telephone Company when he was told that Mr. Steunenberg was doing something for us up there in that country, he brought his hand down on his desk and said "One of God's noblemen, an honest man" that is the way he impressed me.

(Deposition of James T. Barber.)

Q. You say you had confidence in Mr. Palmer in disbursing your money?

A. I certainly did with all the years' experience with him.

Q. When did you first go to Boise, personally, Mr. Barber?

A. I would have to refresh my memory, it was in September, 1902, I think, August 31, 1902.

Q. Did you at any time have any personal talk or conversation or transaction with either Kinkaid, Wells, Downs or Pritchard with reference to acquiring lands in the Boise Basin? A. No, sir.

Q. Was Mr. Downs or Mr. Wells or any other person ever employed by you personally, or by you and Moon jointly, or by the Barber Lumber Company, for the purpose of securing lands for entry-men to locate upon? A. No, sir.

Q. Or for the purpose of soliciting or inducing people to locate on lands? A. No, sir.

Q. What was your attitude, Mr. Barber, about filing on these lands with stone and timber entries?

A. My desire was to secure this desirable tract of timber so far as we could, by the use of Lieu Land Scrip.

Q. Did you procure your lands by the use of Lieu Land Scrip, wherever you did get a head of the timber and stone filings? A. We did.

Q. Do you recollect the incident of this telegram which I read to Mr. Moon to the effect that a party had been recelled and that everything was satisfactory?

(Deposition of James T. Barber.)

A. My recollection of that matter was, was that there was a special agent of the Government around the Boise land office, having been sent there some time previous for the purpose of investigating claims which the Government thought had been fraudulently filed; that after the raising of the embargo, after the raising of the embargo, recalling of the fraud order, this man remained around the Boise office and the officers declined to issue final receipt or patents or anything, even after the fraud order was called off, taking the position that they were still under investigation so long as this man was there. That is my recollection of it. It is not as distinct as it ought to be.

By Mr. GORDON.—That was the order of suspension? A. Yes, sir.

Q. Not to any particular claim?

A. No.

By Mr. BUNDY.—State your understanding, Mr. Barber, of this general suspension order, of its abrogation later.

A. As I understood later, there had been issued from Washington a general order suspending all timber and stone and possibly all other entries in certain large district of the west during an investigation by the Government; that order was in force for some time and afterwards suspended, except in cases where actual charges of fraud had been made. Is that not right?

By Mr. BUNDY.—That is substantially it.

A. Now, the Boise land office after the revocation

(Deposition of James T. Barber.)

of the order took the position that their office was still under special investigation or that the timber and stone entries made through their office was still under investigation so long as the special agent was retained around there, that this telegram referred to the fact that this special agent had been finally recalled. That is the way I recollect it. I am hazy on it a little.

Q. There has been, Mr. Barber, in this case a large amount of evidence relating to certain entries of one Arthur Anderson, and Able Hunter, and Harvey Wells, James T. Ball and Albert Nugent, which entries were made sometime in 1901, and final proofs made December 10, 1901, and which entries were by order of the local land office at Boise, held for suspension and their filings cancelled. It further appears that certain appeals taken from the decision of the local land office to the commissioner to the general land office, who affirmed the rulings of the local land office, and another appeal was taken from the general land office to the Secretary of the Interior, where the order was again affirmed. None of your lands, of course, come to you through their entry. Now, Mr. Barber, at the time when you entered into your agreement with Governor Steunenberg, here at Eau Claire, and at the time you bought out Sweet's interest had you ever heard of the fact, that these gentlemen had entered lands or that any contest had been filed against them, or anything in connection with them? A. No, sir.

Q. Had you ever heard of these entries or the ap-

(Deposition of James T. Barber.)

peals mentioned, prior to the time you saw it charged in a certain indictment served upon you here?

A. No, sir.

Q. Did you at any time authorize Steunenberg or any other person to spend any of your money, the Barber Lumber Company or Mr. Moon's money in the prosecution of those appeals or the contested entries?

A. No, sir.

Q. Was any money spent with your knowledge for either of those purposes?

A. No, sir.

Q. Were you informed by Governor Steunenberg or anybody else in any manner that such filings had been made and such proceedings had, with reference to them as I have described?

A. No, sir.

Q. Were you or Mr. Moon or the company, in any manner interested financially, or otherwise in the contested claims of the five gentlemen I have mentioned?

A. No, sir.

Q. At the time you entered into the agreement with Mr. Steunenberg or at the time you bought out Mr. Sweet, or Mr. Palmer did for you, on the 10th of April, 1902, did you know of this general suspension order that has been mentioned?

A. No, sir.

Q. Had you been advised by anybody, directly or in any manner that there was a general suspension order in force in Idaho, or elsewhere?

A. No, sir.

Q. I will ask you, Mr. Barber, if you ever heard of it until you were informed that such an order had been modified and that the land office were di-

(Deposition of James T. Barber.)

rected to issue final receipts, except where contests were entered?

A. No, sir, I don't think I ever heard of it until that time.

Q. At or about the time you commenced your operation in the Boise Basin, state as to whether or not there were other lumber interests, notably Governor Scofield of this State, and several others who were negotiating for the acquiring of these same lands or were said to be?

A. It was currently reported in the newspapers in Idaho, that Governor Scofield was' organizing a syndicate for the purpose of controlling the timber resources of the Boise Basin, including those in the Basin. It was said that he had instigated a colony of settlers who had pre-empted certain lands on the south fork of the Boise River, and that his operations were going to be very extensive and practically control the *the* timber resources of the entire stream. In addition to that it was reported that Capt. Henry and Turrish were operating along the same line. This report came largely from Palmer as the correspondence shows. It seemed to be a lumber proposition that was attracting considerable attention at that time in the newspapers, and in the investigation of these different people.

Q. What if any effect, did the threatened competition of that kind have, Mr. Barber, in the manner of your proceedings there, particularly in the manner of taking titles?

A. Why, it brought home to us the necessity of

(Deposition of James T. Barber.)

moving under cover as much as possible, to keep our plans of operation from the ears of our competitors.

Q. I will ask you as to why the titles were taken in the name of Palmer instead of you and Mr. Moon when they were first bought from the entrymen?

A. Well, we thought it was necessary to take them in the name of some party other than an extensively recognized lumberman. I was generally known as a lumberman looking for a western proposition. Scofield knew it and Capt. Henry knew it, and we thought it better that the titles should be taken in some one less known in the lumber business.

Q. What effect did you think it would have if taken in the name of some one not a lumberman on the stone and timber entries?

A. It is a well known fact, that if a lumber company or a man recognized as a large operator was buying title, that the price would unavoidably be enhanced. You start out and buy fifty pieces of land from fifty different owners yourself, and any business man will take the precaution to take the titles, as he buys them given in different people's names and he will work in a guarded kind of a way, if he expects to get these pieces of property at a reasonable price.

Q. Did Gov. Steunenberg, who was under contract to buy these at a stipulated price share in that view of taking them in the name of one not known as an operating lumberman?

A. He did.

(Deposition of James T. Barber.)

Q. Mr. Barber, do you know or did you learn that some of the deeds which were taken in the Boise Basin were subsequently changed and new deeds taken for them? Did that matter come to your attention at one time? A. Yes, sir.

Q. Do you know why that was done; why it was said it was done?

A. My recollection of the matter is that we discovered as deeds began to arrive the actual consideration was not named in the deed. We objected to this and requested that new deeds be taken with the correct consideration stated in the deeds.

By Mr. BUNDY.—I offer a few letters bearing on the question of new deeds.

Q. I show you a letter taken from the files of the company marked 134. Is that a letter you received from Gov. Steunenberg? A. Yes, sir.

Q. Received July 30, 1902, is indicated by your stamp? A. Yes, sir.

By Mr. BUNDY.—We offer that letter in evidence. It reads:

“Caldwell, July 27, 1902.

Hon. James T. Barber,
Eau Claire, Wis.

My dear Sir: Immediately upon my arrival here today, I was handed wire from Mr. Palmer in which he protested against the consideration named in the deeds from timber entrymen. Now, the matter of consideration to be named in the deeds is one which I leave to the judgment and discretion of the entrymen and Mr. Kinkaid, and unless I receive explicit

(Deposition of James T. Barber.)

orders from you to name the exact amount, I do not want to interfere.

Very truly,

FRANK STEUNENBERG.

P. S. I can't take new titles in two cases without great annoyance.

F. S."

Q. At that time, Mr. Barber, had you learned that Gov. Steunenberg had employed Mr. Kinkaid, a local man there to assist him in purchasing land under his contract with you?

A. I learned it at some time; I don't remember when I learned it.

Q. Was Mr. Kinkaid employed in any manner by you? A. No, sir.

Q. Was he connected with it in any manner as you understood, except as assistant to Mr. Steunenberg? A. No, sir.

Q. I see in blue pencil at the top the words "Please return. Palmer." I will ask you if that letter was sent by you to Mr. Palmer?

A. I can't tell; it was sent to somebody with the request to be returned. I think it was sent to Mr. Palmer; I am quite sure it was.

Q. I show you a letter from the files of the company, 135, and ask you if that is a letter you received from Governor Steunenberg on the 29th day of July, 1902? A. Yes, sir.

By Mr. BUNDY.—We offer it in evidence, reads:

(Deposition of James T. Barber.)

Boise, Idaho, July 26, 1902.

Hon J. T. Barber,
Eau Claire, Wis.

My dear Sir: Mr. Palmer was here yesterday, returned to Spokane today. He left me a list of estimates on what we call scrip forties. There were 119 of these forties and he has rejected about 41 of them for the reason that each and every one does not have at least 320,000 feet pine. 10 of the rejections have from 260,000 to 320,000. I don't believe it wise to throw out any forty advantageously situated that has at least 250,000 feet, on it and again many of the accepted forties have far in excess of the 320,000 feet required, and I will advise him of your advice and wishes in this matter.

Also informs me as to when you can furnish the Scrip. I have not felt like laying any Scrip until the entries were out of the way. The last advices are that practically all have been released. I have taken nearly 50 titles to date. Mr. Palmer has 31 in his possession. I have held out 14 for the reason that entrymen had been assured that they would have privilege of making new deeds at later date. They don't want record to show that they had rushed off and sold at first opportunity, still as they wanted their money I didn't feel safe unless title passed, telling them they could make a new conveyance at later date.

The above mentioned about Scrip purchases is made for the reason that Messrs. Moon, Carson and Palmer agreed while here that that feature of the

(Deposition of James T. Barber.)

enterprise would be looked after by them. I neglected to state in the foregoing statement while discussing number of titles to say that the remainder of the 50 are in the hands of attorney, awaiting wife's signatures in most cases. Don't buy the scrip forthwith unless you can buy it right. I expect, however, to get it within a few weeks or just as soon as the remaining of the titles of entrymen are taken. Do not offer any of the deeds for record at this time for such action will stampede such of the entrymen as are yet to transfer. Kindly advise me as to your views on this feature, I have not as yet had a moment's time to consider the Company matter, but will do so at once,

Yours truly,

FRANK STEUNENBERG,

Caldwell, Idaho.

Q. Does that letter refresh your recollection as to Mr. Steunenberg's statement that someone had assured the entrymen that they would have to deed at a later date?

A. Yes, sir; I remember it as he states it there.

Q. Then that and the consideration seems to have been the two reasons why it was desired to take substantially all deeds in the name of Mr. Palmer?

A. Yes, sir.

Q. Did you know anything about the details which deeds he was referring to, did you pay any attention, Mr. Barber, to the buying and taking of conveyances from anyone?

A. No, sir.

Q. Did you have any knowledge of the subject,

(Deposition of James T. Barber.)

except when the deeds were sent to you by Mr. Palmer and you furnished the money through him for that purpose? A. None, whatever.

Q. I show you a book, Mr. Barber, letter-press, copy-book, marked Barber Lumber Company, Eau Claire, Wisconsin A. Is that a book in which the correspondence of the Barber Lumber Company was kept in whole or in part from the time of its beginning; beginning with July 28, 1902?

A. Yes, sir.

Q. Now, I show you on page 4 of the Barber Lumber Company copy-book, the copy of a letter and ask you if that is a copy of a letter you wrote to Mr. Steunenberg on or about that time?

A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence.

“July 29, 1902.

Mr. Frank Steunenberg,
Caldwell, Idaho.

Dear Sir: I have your letter of the 26th. We recognize the fact that you have agreed to furnish 25,000 acres of timber land in Idaho, at cost not to exceed \$6.00 per acre, and in the aggregate not exceeding 140,000 dollars, and we have agreed to purchase the same from you. The title to this property to finally come to a corporation in which you are to have a one-fourth interest. It seems to me that you are certainly as much interested as any of us in securing as much timber for the money invested as possible, and if it is possible to secure land bearing more than 320,000 feet to the forty acre tract.

(Deposition of James T. Barber.)

In using Scrip you should be anxious to do this as we are. We are not going to dictate to you the details of the necessary transactions which are to culminate under the contract, but we caution you that whatever you do be sure that the aggregate comes within the terms of the agreement. Many of the quarter sections already past upon average less than 250,000 feet pine to the forty; at present Mr. Carson of Burlington and Mr. Palmer have the matter of using Scrip in hand, and I know that they will be ready to furnish all that will be required at a date as early as you will be able to use it. I have written Mr. Palmer with reference to recording the title he is now in possession of. In the matter of sending the notes sent you some time since, I would say that of course you need not send these notes after execution, directly to us unless you care to do so. You may forward them to any bank here in Eau Claire with instructions to deliver them to us in return for receipts sent by us, showing that we hold the 37,500 dollars stock in the Barber Lumber Company as collateral security for the notes.

Yours very truly,

JAMES T. BARBER, President."

Q. The notes therein referred to Mr. Barber, are the notes Mr. Steunenberg gave you to evidence the advancement you made to him for the one-fourth interest in the capitalization of the company, are they not? A. Yes, sir.

(By Mr. GORDON.)

Q. They were the notes that Steunenberg gave?

(Deposition of James T. Barber.)

A. Individual notes.

(By Mr. BUNDY.)

Q. I show you a letter on page 7 the copy-book of the Barber Lumber Company and ask you if that is a copy of a letter you wrote Mr. Steunenberg on or about that date? A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence. Reads as follows:

“July 30, 1902.

Frank Steunenberg,
Caldwell, Idaho.

My dear Sir: I have your letter of the 27th about consideration named in deeds being made for lands to Palmer. The Law here and I presume it is the same there is to the effect that in the event the title to warranty deed fails, the vendor must pay the vendee the consideration named and interest on same. It seems to me that for the protection of all parties the actual considerations as nearly as practicable should be stated in the conveyances. We are not going to be arbitrary in this matter, but we do not want deeds to show consideration so small in money that some other consideration is apparent, or so great as to convey a wrong impression of the value of lands in that locality. I have written Palmer much as above.

Very truly yours,

J. T. BARBER.”

Q. Mr. Barber, do you know A. E. Macartany, of St. Paul? A. Yes, sir.

Q. He is the attorney for Mr. Carson, is he not?

(Deposition of James T. Barber.)

A. Yes, sir.

Q. And is attorney for the Barber Lumber Company?

A. Yes, sir; he has acted in that capacity.

Q. And acted as attorney for the company in its original Idaho matters?

A. Yes, sir.

Q. Do you remember consulting Mr. Macartany with reference to this consideration named in the deeds?

A. Yes, sir.

Q. I show you copy of letter on page 939 of the copy-book of the Northwestern Lumber Company, and ask you if that is a copy of a letter that you wrote Mr. Macartany?

A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence.

“August 4, 1902.

A. E. Macartany,

St. Paul, Minn.

Dear Sir: We are in receipt of deeds for 31 quarter sections, running from Palmer to Barber Lumber Company, and also conveyances from sundry parties to Palmer. In the latter deeds secured, as you know by Steunenbergs, consideration in every case is largely overstated, running from 1000 dollars to 2000 dollars per quarter section. Is there any danger in accepting these deeds? I expect to be in St. Paul on Thursday and want to see you if you are going to be in the city.

Yours truly,

JAMES T. BARBER.”

Examination adjourned to 1:30 P. M. of this day.

(Deposition of James T. Barber.)

Examination of Mr. Barber resumed at 2 o'clock P. M., of this day.

(By Mr. BUNDY.)

Q. Mr. Barber, I show you a letter taken from the files of the company, marked 226; is that a letter received by you from Frank Steunenber?

A. Yes, sir.

Q. And received at or about the time of its date?

A. Yes, sir.

By Mr. BUNDY.—We offer that letter in evidence:

“Boise, Idaho, May 29, 1903.

James T. Barber,

Eau Claire, Wis.

Dear Sir:”

By Mr. BUNDY.—The last paragraph is the only one I want to introduce.

“I wish that you would inform Mr. Moore that my list of titles—Basin, is not yet complete, as Mr. Kin-kaid who has been replacing some of them has not been here for nearly ten days. I will forward list immediately upon his return, which should not be later than Monday.”

Q. I suppose Mr. Moore, means Mr. Moon?

A. Yes, sir.

Q. I show you a copy of letter, page 160 of the Barber Lumber Company letter-book. I guess that is a copy of Mr. Moon's signature attached.

A. Yes, sir.

Q. Appears in the files of the company, does it not?
A. Yes, sir.

(Deposition of James T. Barber.)

By Mr. GORDON.—To whom?

By Mr. BUNDY.—To Steunenber.

“June 18, 1903.

Hon. Frank Steunenber,

Caldwell, Idaho.

Dear Sir: I have your favor of the 10th together with list of deeds in the Basin for which I thank you. The Crooked River deeds which you sent some time ago 49-78 came in due time. I note what you say with reference to recording deeds and see no objection to holding deed as you suggest. I see no particular objection to your getting new deeds to replace some of the old ones in the Basin if there is anything to be gained by it, except that all the land covered by these deeds has been redeeded to our company by Mr. Palmer. If you take new deeds of later date, please keep careful memorandum of them and let me know what they are, so we can get new deeds from Palmer. I am sending you by express to-day all of the Crooked River deeds, except numbers 2, 3, and 4 which run to Mr. Palmer, and which have been sent to him for the purpose of having him make deed to the Barber Lumber Company covering the same land. As soon as we get them back, I will forward them to you. Please have all of these deeds recorded. I have been delayed some in sending them to you, as I have been getting a deed from Mr. Rand covering the same land. Deed No. 1 runs to you and we should have quit-claim deed from you running to the Barber Lumber Company. You will notice on looking these deeds over that in numbers 23 and 24

(Deposition of James T. Barber.)

the description is not complete. It fails to say that one of the forties is in section 9. In numbers 32 and 52 there is no consideration mentioned, and number 54 bears no date.

All of these omissions should be corrected before the deeds are sent in for record. They should not bear date later than June 1st, as we already have deeds covering the same land from Mr. Rand."

Mr. Barber, I show you another letter on page 223 of the copy-book of the Barber Lumber Company; is that a copy of a letter and sent by Mr. Moon, secretary of the company? A. Yes, sir.

By Mr. BUNDY.—We offer it in evidence and reads as follows:

"September 3, 1903.

Hon. Frank Steunenberg,
Caldwell, Idaho.

By Mr. BUNDY.—I will only offer at this time the last paragraph.

"Please advise me as soon as convenient how you are getting along with recording the deeds and how soon we may expect the deeds returned to this office, also please advice me at once of any of the Basin deeds which had to be changed in any way, so that we may get a new deed from Mr. Palmer without any delay. I should think it wise not to change any of the deeds unless there is strong reason for doing so. I hope you will send your final report on the Basin portion as soon as you can possibly get it in shape."

Q. Mr. Barber, we have covered in this examination now to practically the close of the procuring

(Deposition of James T. Barber.)

of Basin deeds through the Governor Steunenberg contract, and taken up to about, the first of September, 1903; 1902, I believe you said you made your first trip to Boise, on August 31, 1902, and was there until some part of September; now when did you first learn of the fact that there was desirable timber in the district we spoke of as the Crooked River territory?

A. My recollection is that Mr. Steunenberg told us at the time we were out there in September, 1902, that there was quite a large body of desirable timber on Crooked River and tributaries of the north fork of the Boise River and lying directly east of the Boise Basin, that more or less timber had been cut on that river and floated to Boise for manufacture, and that he thought quite a large tract could be obtained with the Lieu Land Scrip that could be utilized in our proposed operations at Boise.

Q. What if any instruction or authority did you give Mr. Steunenberg?

A. We directed Mr. Steunenberg to have the matter looked into as soon as possible; the timber cruised and estimated, and to take steps towards the necessary information and the securing of the timber.

Q. By what means?

A. By Lieu Land Scrip. Where I say we in the matter, I mean Mr. Wm. Carson and myself, who were there together.

Q. Did Mr. Steunenberg afterwards employ someone to look over the land with the view of scripping it?

(Deposition of James T. Barber.)

A. Mr. Steunenberg reported to us in Eau Claire, that he had engaged a Mr. Taylor who was highly recommended to investigate the land, cruise it and estimate it. He reported that Mr. Taylor had gone to the land office and found that the land could be obtained by the use of scrip at that time, and had sent Mr. Taylor up for the purpose of getting information. This report came after our return. This statement of Steunenberg's that he had engaged Mr. Taylor.

Q. Mr. Steunenberg came to Eau Claire sometime later in December, 1902, didn't he?

A. Mr. Steunenberg either wrote us or telegraphed us that he was coming to Eau Claire; that he had important information with reference to the Crooked River timber land. He came here and reported that Mr. Taylor had gone onto the lands, made considerable investigation, and ascertained while on the land that timber and stone entries had been made, covering a large part of the most valuable timber, that Mr. Taylor had come on on obtaining this information and had been investigating the question at the land office, and found Mr. Taylor's information was correct, that these entries had been made at the time that Taylor had started to go up there, but the work in the land office was behind, and while they had records of these timber and stone entries at that time at the land office, they had not been transferred to the plats, which I believe govern these questions, and that the information that Taylor obtained that the lands were open to scrip, was not true. They

(Deposition of James T. Barber.)

were not subject to scrip when Taylor went up there.

Q. At that time did you have any knowledge or information of any timber or stone entries or filings made in the Crooked River country until it was reported to you by Governor Steunenberg at the time he was here in Eau Claire?

A. No, sir; we had none.

Q. That report which Governor Steunenberg made to you was based upon the report made to him by Taylor? A. Yes, sir.

Q. And that report was brought to Eau Claire by Governor Steunenberg?

A. Yes, sir; and delivered to us; we have it here.

Q. I show you a document which the stenographer has marked Exhibit "A," and I ask if that is the report brought to you by Governor Steunenberg?

A. Yes, sir; that is the report.

By Mr. BUNDY.—We offer that in evidence.

"Caldwell, Idaho, Dec. 5, 1902.

Hon. Frank Steunenberg,
Caldwell, Idaho.

Dear Sir: In pursuance of an agreement entered into with you on the 11th day of October, 1902, for the cruising of the north fork of the Boise River and its tributaries, I beg leave to report that I secured plats from the general land office which showed that the lands were all subject to entry; that I secured the services of a competent assistant and proceeded by rail stage and private conveyance to the immediate vicinity of the river. As the lateness of the season made it impracticable to keep pack animals in the

(Deposition of James T. Barber.)

timber, I hired a pack outfit at Kempatorer to pack my camp supplies to the most convenient place from which the work could be prosecuted and pitched camp in town 7 north, range 8 east, on Lost Creek, I cruised the timber on Crooked river which is a tributary of the Boise, and as I had charge of a tie camp there in '83 when ties were cut for the Oregon Short line, I was quite familiar with the country.

Crooked river is a good stream for floating logs as it carries a large volume of water in the early part of the season and would need very little improvement which could be done at the maximum cost of \$5000.00. I found that the valuable timber heaviest, covers between twelve and fifteen thousand acres and is principally yellow pine which will run about fifteen thousand feet per acre and is of excellent quality. I have been employed by the state for the past four years in selling, estimating and appraising timber in both northern and southern Idaho, have been actively engaged in the lumbering business in Michigan and I must say that I consider this an exceedingly fine body of timber. I found out accidentally from some parties I met on Lost Creek that there had been some considerable number of locations made in town 7 north, range 8 east, and knowing the parties personally, and knowing them to be reliable, I deemed it wise to suspend operations and make further investigation. I therefore left my assistant on the ground and proceeded to Boise City and after making further investigation found that while the plats showed that the

(Deposition of James T. Barber.)

land was subject to entry, it was located, but hadn't been checked up on the plats and that there was really no desirable timber left on surveyed land. I therefore got word to my assistant as soon as possible to pack camp and come in which he did.

Now, I believe that you will be very much disappointed at the turn matters have taken as you would have been able to secure a very valuable tract of timber, had the land been subject to entry, as we had every reason to believe; as the plats are supposed to be the final record. If I can assist you further in any way in this matter, I shall only be too glad to do so.

Respectfully submitted,

W. H. TAYLOR."

Q. Was Mr. Taylor's investigation and his final report to Governor Steunenberg the result of the instructions which you and Mr. Carson gave to Mr. Steunenberg to have the Crooked River country investigated at the time you were there in September?

A. Yes, sir.

Q. At that time or any time up to the time you say Taylor reported, did you know Mr. Barber, that any timber and stone entries or filings had been made in the Crooked River country?

A. No, sir.

Q. Had you any information prior to that at that time?

A. No, sir.

Q. In contemplation and expectation of finding timber in the Crooked River country which you could procure by the use of scrip? Did you make arrangements for the purpose of procuring scrip for that

(Deposition of James T. Barber.)

purpose?

A. Yes, sir; we made inquiry where we could get the necessary scrip, prices, etc.

Q. Mr. Barber, at the time Governor Steunenberg reported to you that the opportunity to procure scrip of the Crooked River country passed away with the entry of these stone and timber claims, did he give you any information as to ability to buy them, and if so, what; state fully what he said.

A. He said that Mr. Kinkaid had secured an option or some authority from the entrymen to sell these claims and that he, Steunenberg had an opportunity to buy them at a price not exceeding \$1000.00 a claim of 160 acres. He thought possibly they might be purchased for a little less than that, but that Kinkaid had told him, that unless prompt action was taken by the Barber Lumber Company, he was authorized and was going to start east for the purpose of interesting somebody in the purchase of this body of claims, and Steunenberg insisted that unless we did take very prompt action, Mr. Kinkaid would go on with his plans and we possibly would not be able to secure this desirable tract of timber.

Q. This information was given you by Governor Steunenberg at the time he was here in Eau Claire, and that was sometime in what month?

A. It was in December, 1902, I think.

Q. Now, up to that time had you had any negotiations with Governor Steunenberg or anybody else with reference to acquiring these lands by purchase?

A. No, sir.

(Deposition of James T. Barber.)

Q. Had you any estimate made or know anything about these lands at that time?

A. Not until Taylor's report was received. That was the first actual knowledge we had of this timber. This report Steunenberg brought at that time.

Q. At that time did you authorize and give Governor Steunenberg authority to send someone up to cruise the timber to see if you wanted to buy it, or did you authorize him to negotiate for it?

A. Either at that time or immediately following that time, we authorized Mr. Steunenberg to negotiate and purchase the timber from the entrymen and not exceeding \$1000.00 for each claim.

Q. With whom was these negotiations carried on at that end, with the entrymen themselves or somebody representing them?

A. I understood from Mr. Steunenberg's report that Mr. Kinkaid had an option or some kind of authority from the entrymen enabling him to negotiate all or practically all of the entries at one time.

Q. And are these the entries which are referred to in the correspondence as the Kinkaid entries?

A. I don't recollect. Think they were commonly called the Crooked River entries. We may have referred to them as the Kinkaid entries.

Q. Did Governor Steunenberg afterwards report that he had negotiated with Kinkaid?

A. He reported the purchase of them from time to time.

By Mr. BUNDY.—I want to put in some letters relative to the Crooked River country so called.

(Deposition of James T. Barber.)

Q. I show you a letter marked 169, Mr. Barber, taken from the files of the company, and ask you if that is a letter you received from Governor Steunenberg? A. Yes, sir.

Q. Indicating by your stamp that it was received Jan. 23, 1903? A. Yes, sir.

By Mr. BUNDY.—We offer this letter in evidence.

“Boise, Idaho, Jan. 19, 1902.

J. T. Barber, Esq.,

Eau Claire, Wis.

My Dear Sir:”

By Mr. BUNDY.—I am beginning at the bottom of page 2 and the only part relating to this reads as follows:

“Mr. Taylor has been confined to his bed the past week, but will be here to-night when I expect to conclude arrangements with him to cancell the Crooked River entries and make such estimates as will guild him in negotiating for the same. Have succeeded in sealing down the price to \$950.00 per entry. Don’t feel I can do any better but have not closed, I have \$900. Send you this express map of Boise and vicinity as per your request. Will keep you informed of operations as they develop.

Very truly,

FRANK STEUNENBERG.”

By Mr. BUNDY.—That letter is dated January 19, 1902. A. 1903.

Q. 1903? Up to that time neither you nor the Barber Lumber Company had closed any contract for the purchase of timber on Crooked River in any

(Deposition of James T. Barber.)

manner? A. No.

Q. Up to that time it was simply negotiated upon between Gov. Steunenberg acting for the company and the entrymen through Mr. Kinkaid as you understood? A. Yes, sir.

Q. That letter is just a little out of place. I started at 169 instead of 159. I show you a copy of letter Mr. Barber, on page 32 of the Barber Lumber Company letter-book; is that a copy of a letter you wrote and mailed to Mr. Steunenberg?

A. Yes, sir.

By Mr. BUNDY.—I offer that letter in evidence.

“Eau Claire, Dec. 8, 1902.

Hon. Frank Steunenberg,

Caldwell, Idaho.

Dear Sir: I have your letter of the 6th. Am more than surprised at the foolish action taken by Scofield in the matter of publicity. They surely are not serious in their intentions or they would avoid newspaper notariety. I hand you herewith copy of our letter to Mr. Bancroft, and also his reply, and I enclose my letter to him to which I have received no answer. This Scofield business makes it necessary to push action along the Boise River proper and Mr. Taylor's report should be secured at once and our available scrip used to the best advantage in that locality. Has anything been done looking toward the offer for the sale of state land in the Basin along the lines suggested by you? Is it not true that the season is now so far advanced that no work can be done in the way of estimating in that part of the

(Deposition of James T. Barber.)

country before spring? You keep us thoroughly posted of developments for our interests in that section.

Yours truly,

JAMES T. BARBER."

Q. I now show you a telegram taken from the files of the Company and ask you if you received that from Mr. Steunenberg on Dec. 22, 1902?

A. Yes, sir.

Q. Being marked 164 which we offer in evidence.

"Spokane, Wash. Dec. 21, '02.

J. T. Barber,

Eau Claire, Wis.

Start to-night. Have important information concerning north fork.

FRANK STEUNENBERG."

Q. I now show you a copy of a letter on page 49 of the Barber Lumber Company copy-book; is that a copy of a letter you wrote and mailed to Mr. Wm. Carson on or about that date? A. Yes, sir.

By Mr. BUNDY.—We offer that letter in evidence.

"Eau Claire, Jan. 2, 1903.

My dear Mr. Carson:

I am in receipt of your letter of the 29th and note your suggestion as to having the north fork of the Boise River carefully examined to ascertain how far up the river it is drivable. Of course, there can be no question on this point from the mouth of Crooked river on which stream most of the Kinkaid entries are made. As it has been successfully driven from

(Deposition of James T. Barber.)

this point, every year for the past four or five years, and there is now a logging camp near the mouth of this Creek, putting logs in the river. I find my self blocked in securing the services of a reliable estimator. The only man being immediately available is Mr. W. H. Taylorm who was the man recently sent up the river by Governor Steunenberg, and who returned on finding the country occupied by settlers. This man obtained information from other sources then Governor Steunenberg and has been employed for several years estimating for the state of Idaho, and it is upon his estimates that nearly all the timber in Idaho is being sold. His experience was obtained in Michiga, and he is represented as being honest and reliable with a good knowledge of Idaho timber. We might possibly secure the services of John Pearson of Duluth, about whom we have all heard a good deal, after the first of February, but the question is raised in my mind whether it would be desirable to put a man identified with Turrish and Warehouser in a position to gain as much information about our affairs as he would pick up in doing this work for us. The work will not begin until after January 6th, and if you know of anybody more desirable than Taylor, let me know at once, and I will arrange to have him substituted. It would hardly be worth while to have Taylor examine Crooked Creek and the north fork as their being good drivable streams as he stated in his report which I sent to you, that he is familiar with that country and that Crooked Creek is a good

(Deposition of James T. Barber.)

stream for floating logs, etc. The Governor can find dozens of men in Boise who have driven logs on the north fork from above the mouth of Crooked Creek. The mills have latterly received a large portion of their supplies of logs from this section, stolen of course from Government land. I received under another cover, all the documents sent you and presume you didn't care to retain them longer. You certainly could have held them as long as you desired. One object in returning them here being to have them filed with other papers. Kindly let me know when you intend to go to Chicago? I will very likely see you there as I am now expecting daily a communication from Camel with reference to the subject of our interview with him. I extend your congratulations to Mr. Moon and promise he will make due acknowledgment.

Yours truly,

J. T. BARBER."

Q. What Mr. Camel was that?

A. He was an assistant to Mr. J. C. Stubb. He represented the Harriman railroad interest in the west, located in Chicago.

Q. The same Mr. Camel Mr. Palmer told you about?

A. No, sir, our dealings with this Mr. Camel were entirely with reference to securing rates on facilities when we began development and the manufacture and shipment of lumber from Washington.

Q. I show you a letter on page 48 of the Barber Lumber Company book; is that a copy of a letter

(Deposition of James T. Barber.)

you wrote and mailed Governor Steunenber?

A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence. It reads:

“Eau Claire, Dec. 29, '02.

Hon Frank Steunenber,
Caldwell, Idaho.

In making the deal with Mr. Kinkaid, have the deeds to run to A. E. Palmer the same as the other lands you have been buying for us. We are exceedingly anxious to have everything pertaining to the Barber Lumber Company's plans pushed with all the energy possible from now on. This applies particularly to the obtaining of options upon the property we have considered as desirable for a mill site. As soon as the weather becomes sufficiently settled out there so as to make it comparatively easy to inspect the river and adjacent lands between the canyon above Boise and the canyon beginning at or near Caldwell.

Please let us know and we will visit Boise and make the examination.

Yours truly,

J. T. BARBER.”

Q. Now, I show you copy of a letter found on page 51 of the Barber Lumber Company book. Is that a copy of a letter mailed and written by you to Governor Steuneber? A. Yes, sir.

By Mr. BUNDY.—I offer that in evidence. It reads as follows:

(Deposition of James T. Barber.)

“Eau Claire, Jan. 6, 1903.

Hon. Frank Steuneberg,
Caldwell, Idaho.

Dear Sir: We of course are much interested in learning what action you took with Kinkaid, and also Mr. Bradley with reference to securing option on our proposed mill site. Kindly keep us informed on everything you do promptly. I believe that there is a blue print map of the City of Boise and if you can obtain a copy, please do so and forward to us here as soon as you conveniently can. Will you have Thornton or Downs or somebody else who is familiar with men who have driven the river from the mouth of Crooked River to Boise, Get all the detailed information with reference to the difficulties in the way of driving; number of men used on the drive and the quantity of logs the crew stated can conveniently handle. Any and all information with reference to the driving of saw logs on this reach of river, will be very interesting and valuable to us.

Yours very truly,

JAMES T. BARBER.”

Q. That is a letter that is dated January 6, 1903? At that time had you or the company closed any arrangement; had you any contract or understanding with any person by which you were to buy timber and stone entries in the Crooked River country?

A. No, sir.

Q. I show you a letter taken from the files of the company, marked number 168; is that a letter you received from Governor Steunenbergs on January 22,

(Deposition of James T. Barber.)

1903? A. Yes, sir.

By Mr. BUNDY.—We offer that letter in evidence. It reads:

“Boise, Idaho, Jan. 17, 1903.

Hon. J. T. Barber,

Eau Claire, Wis.

Dear Sir:”

Beginning at the second paragraph, second page:

“Governor Scofield is here accompanied by General Mullen of Oconto, Wisconsin. Scofield told me he was going to start his son George in the lumber manufacturing business here. He had been in the newspapers again promising some additional news with reference to his operations within a week. I learned today from a real estate man that Scofield had taken an option on what is known as the Hammer tract. This tract joins the Goodwin saw mill site on the up river side. Some of his, Scofield’s crowd here, had been making overtures to some of the Crooked River entrymen. While I don’t believe he is ready to buy, the work his crowd is doing is very annoying as the entrymen are pushing Kinkaid to take their claims, thinking that he, Kinkaid, is doing business with and for Scofield. Quite a number of the entrymen have made final proofs and final certificates have issued. I am endeavoring to arrange with Taylor by telephone to come to Boise at once and start the cruising. I will write you immediately upon closing with him. The other information mentioned in your several letters will receive my prompt

(Deposition of James T. Barber.)

attention, and I will forward the same as rapidly as obtained.

Very truly,

FRANK STEUNENBERG.

P. S. In case I take deeds for Crooked River claims soon, how shall I get money? I understand that Palmer is still in Canada and I may need a big bunch of cash on short notice.

F. S."

Q. Up to that date, January 17, 1903, had you closed or entered into any agreement to purchase any or all of the timber and stone claims on Crooked River? A. No, sir.

Q. I show you a letter taken from the files of the company, marked 168½; is that a letter received by you from Governor Steunenbergs? A. Yes, sir.

Q. Received on January 22, 1903?

A. Yes, sir.

By Mr. BUNDY.—We offer that letter in evidence.

"Boise, Idaho, Jan. 18, 1902."

With the stamp mark that it was received January 22, 1903.

"J. T. Barber,

Eau Claire, Wis."

Beginning with middle of third page:

"Now the question is what importance shall we attach to Scofield and his work here, so far as apparent conditions are concerned he is at work in earnest to entrench himself in every way except as to the purchase of timber. The only move he has made

(Deposition of James T. Barber.)

in this direction was as I outlined yesterday, namely; some of his crowd 'local grafters' are making overtures to the Crooked river entrymen. His Fall Creek operation is in charge of a man from your country named, George Lake, the latter and another man who I take to be a cruiser are here at the hotel. Mul-len asked my brother whether he could get what he termed a preliminary franchise from the state. He said he would buy this, that while they had a man here all the past year investigating the stream, Boise river and its tributaries, still when it came to actual improvement, they might want to shift their works two or three miles up or down the river as conditions would demand. Now I dislike to have to spend money to protect ourselves, especially from the hot air methods of Scofield, but these people here do not know of his financial standing, and until he is called to a show down, they are quite likely to give him every facility to promote his enterprise. Such instructions as you gave, I will carry out to the best of my ability.

Yours truly,

FRANK STEUNENBERG."

Q. I show you a letter taken from the files of the company, marked 169; did you receive that letter from Governor Steunenberg on or about that date?

A. Yes, sir. On January 23, 1903.

By Mr. BUNDY.—We offer it in evidence.

(Deposition of James T. Barber.)

“Boise, Idaho, Jan. 19.”

He again has it 1902.

“J. T. Barber, Esq.,
Eau Claire, Wis.

My dear Sir”:

The last of second page and balance of letter we offer:

“Mr. Taylor has been confined to his bed the past week, but will be here to-night when I expect to conclude arrangements with him to visit the Crooked River entries and make such estimates as will aid him in negotiating for the same. Have succeeded in securing a price of \$950.00 per entry. Don't expect I can do any better, but have not closed. I have offered \$900.00. Send you this express, map Boise and vicinity as per your request. Will keep you informed of operations as they develop.

Yours truly.”

Q. I show you a copy of letter found on page 58 of the Barber Lumber Company's book; is that a copy of a letter you wrote Gov. Steunenberg?

A. Yes, sir.

By Mr. BUNDY.—I offer that in evidence.

“Eau Claire, Jan. 20, 1903.

Hon. Frank. Steunenberg,

Caldwell, Idaho.

Dear Sir: Your telegram from Boise on the 18th was received, and with immediate answer directing you to take any necessary action to protect our interests in the Boise river at all hazards; the writer was called to St. Paul Monday morning and tele-

(Deposition of James T. Barber.)

graphed you again saying we would depend upon you to look after our interest in matter of river franchises and mill site options. Our affairs along Boise River seem to have reached a crisis, and we want you to assume the responsibility of making application for the appropriation of whatever rights and facilities the state is able to grant along the Boise River, including tributaries, and we also must again impress upon you the necessity of getting the control of the mill site proposition.

Mr. Moon is writing you today about the state timber, and I trust you will use all possible dispatch in securing control of the timber offered through Kinkaid.

We are anxiously looking for letters from you, fully describing the situation.

Yours very truly,

J. T. BARBER."

Q. I show you a letter taken from the files of the company, marked 172 and ask you if that is a letter received from Governor Steunenberg on Jan. 26, '03? A. Yes, sir.

By Mr. BUNDY.—We offer that letter in evidence.

"Boise, Idaho, Jan. 21."

And he has again dated it 1902.

"J. T. Barber,

Eau Claire, Wis.

My dear Sir: Taylor departed from Crooked River this morning. I made 10 random selections from the entries for him to estimate. Expect him back

(Deposition of James T. Barber.)

in about two weeks. I arranged to meet him and Downs yesterday, and we talked the Crooked river tract quite thoroughly. Downs is quite pronounced in his statement that the timber there is better than in the Basin. Taylor was disposed to agree with him, but qualified his view by saying that his observation of the Basin timber was confined to the highways and trails and in cruising. I had Taylor mingle with many of the loggers here who have worked the north fork. His main information was obtained from a man by the name of Jack Works, Taylor having known him for many years. Works says the only work on north fork will be to blast out boulders in the center of the stream. The only trouble they have had being an occasional center jam. Works thought a comparatively small sum would put the north fork in good driving condition. I asked Downs the sources of his information as to the north fork, and he told me he had investigated every foot of the stream himself, and took with many who had worked on the different drives. His information comes from a man named Frank Ross, who has banked and taken out several drives for local mills. Ross told Downs that a drive for one of the local mills hung up on the lower river one year for the reason that they failed to put it in in time, and by the time they got it out near Boise, or the lower river, the water had gone down for the season. The removal of a few boulders will make the north fork easy says Ross. There are no flats or slews.

I have crossed this river many times in April at

(Deposition of James T. Barber.)

its mouth, and it discharged a great volume of water.

Downs visited the Fall Creek tract last August. As he found it unsurveyed and squatters there to great number, he didn't inspect thoroughly. He said he met a man by the name of Banister there, and that the latter told him there were about two hundred million on the Creek. Downs says that each of the squatters has marked out a homestead and timber and stone claims. There is about three miles of canyon filled with lava rock between the timber and the river. Almost every rod of the canyon will have to be worked before it can be logged. Scofield is conducting his operations on this Creek.

Yours truly,

FRANK STEUNENBERG.

Yes, Don't fail to instruct me how to proceed financially with Crooked river in case I take it.

F. S."

Q. Mr. Barber, up to date Jan. 21, 1903, had you as yet authorized Governor Steunenberg to buy Crooked river entries, or made any arrangements to buy them?

A. No, sir; why we authorized Governor Stunenberg to negotiate for them.

Q. Had they terms at that time for their purchase? A. No, sir.

Q. I show you copy of letter on page 63 of the Barber Lumber Company book *book*; is that a copy of a letter written and mailed to Governor Steunenberg? A. Yes, sir.

(Deposition of James T. Barber.)

By Mr. BUNDY.—We offer that in evidence. It reads:

“Eau Claire, Jan. 22, 1903.

Hon. Frank Steunenberg,

Boise, Idaho.

Dear Sir: In the matter of Kinkaid lands I would say, that if you are satisfied that Downs has estimated them fairly and a point can be made by taking in eight or ten of them without waiting for Taylor, you are at liberty to do so, and have Taylor estimate them as fast as possible. You can draw on us for money required for these and other purposes. We think you should retain Mr. Borah. Have wired you to that effect and should take all preliminary steps to secure franchises covering the Boise River and its tributaries. We do not know what is necessary, but you may say that we are prepared to spend fifty thousand dollars to make these streams drivable and in driving facilities for handling and sorting logs.

Yours truly,

JAMES T. BARBER.”

Q. Now, Mr. Barber, what land was referred to there as the Kinkaid land?

A. That was the Crooked River tract.

Q. What is referred to by saying that you were taking in a few on Downs' estimates if he was satisfied with it, but to have Taylor estimate them as fast as possible?

A. The information came to us that Mr. Downs had located these entries and necessarily in the locat-

(Deposition of James T. Barber.)

ing of them he had to a certain extent cruised and estimated the different entries and in that way had obtained, of course, a good deal of knowledge with reference to how much timber there was on each individual claim. In fact, my impression is that the entrymen may have had estimates which they claim were made at the time they were located. It was not particularly applicable to that tract; what entrymen usually have.

Q. What was the purpose of directing Stunenberg to have Taylor estimate the land?

A. So as to be sure we were getting timbered lands, not bald mountains that had been entered for the purpose of getting some money out of us.

Q. Was it your plan to have them estimated by Mr. Taylor with a view of determining as to whether or not you wanted to buy them? A. Yes, sir.

Q. So at that time you hadn't determined whether you wanted to take the Crooked River tract or not?

A. No, sir.

Q. That date being Jan. 22, 1903, I now offer letter found in the files; I show you letter found in the files, marked 175; is that a letter received by you from Governor Steunenberg on Jan. 30, 1903?

A. Yes, sir.

By Mr. BUNDY.—We offer that letter.

“Caldwell, Idaho, Jan. 26.

Hon. J. T. Barber,

Eau Claire, Wis.

Dear Sir:”

This is all about millsite, except the last paragraph which I offer:

(Deposition of James T. Barber.)

“In your letter to-day, you didn’t tell me how to proceed with the finances, provided I closed for the Crooked river tract. This may be of some importance as about fifty of the entrymen have their final certificates. I go to Boise again this afternoon.

Very truly,

FRANK STEUNENBERG.”

By Mr. BUNDY.—I don’t offer anything but the last paragraph, all the rest relates to something else.

Q. I show you letter taken from the files of the company, marked 183; is that a letter received by you from Governor Steunenberg at or about its date?

A. Yes, sir.

By Mr. BUNDY.—We offer this in evidence which reads:

“Boise, Idaho, Feb. 3, 1902.”

He has this one again 1902; it should be 1903. I offer the letter beginning with paragraph 2:

“I have taken one title on Crooked river but think more will be necessary right soon, probably to-morrow. A local attorney here named Tiptan, present assistant U. S. Attorney, is at work among the entrymen offering quite a considerable advance over the Kinkaid arrangements. Thus far he has only requested options, am anxiously awaiting Taylor’s return. Three feet of new snow has fallen in the mountains since he left two weeks ago to-morrow. A miner from Edna brought the news that he, Taylor laid out one night on the Moore’s Creek summit. The new snow being a great depth and soft, makes snow shoeing difficult.

FRANK STEUNENBERG.”

(Deposition of James T. Barber.)

Q. Mr. Taylor made another trip into the Crooked River after the first one he made in search of scrip land? A. Yes, sir.

Q. And you subsequently bought the Crooked River land on his recommendation?

A. Yes, sir.

Q. I show you a letter taken from the files of the company, number 184; is that a letter received by you Feb. 17, 1903? A. Yes, sir.

“Boise, Idaho, Feb. 12, 1903.

Hon. J. T. Barber,

Eau Claire, Wis.

My dear Sir:”

First page is all millsite, and beginning at the top of page three reads:

“Commenced buying Crooked river yesterday morning. Have taken about thirty up to to-night. There is an adverse interest in the field that is causing some trouble, some of the entrymen have gone into a pool and will not sell.

Local grafters are at the bottom. Hope to be able to keep the pool down to ten claims. Will write you all the details as soon as I secure reliable information. Have drawn on you for \$20,000.00, I may ask you by wire tomorrow to wire me \$20,000, as the banks here might not be able to handle the business as quickly as I want the money.

Very truly,

FRANK STEUNENBERG.”

Q. Mr. Barber, was that the first money sent by you or Mr. Moon or the Barber Lumber Company to

(Deposition of James T. Barber.)

the State of Idaho for the purpose of buying titles in the Crooked River country? A. Yes, sir.

Q. Now, I want to offer an entry, being the first entry of the ledger of the Barber Lumber Company in account with Frank Steunenberg. Ledger entry being as follows:

“March 31, 1903, to cash \$65,000.00. Reference to cash book page 5, we offer entry on page 5 which reads as follows: Frank Steunenberg Feb. 18, 1903 to your draft on us \$20,000.00, Feb. 20, 1903 to your draft on us \$25,000.00. March 23, 1903, to your draft on us \$20,000.00. Total \$65,000.00.

Q. Mr. Barber, can you tell without reference to letters what these three drafts were sent for?

A. Sent to pay for the purchase of Crooked River lands timber.

Q. I now show you letter taken from the files of the company, marked number 185; is that a letter received by you from Governor Steunenberg, Feb. 18, 1903? A. Yes, sir.

By Mr. BUNDY.—We offer that letter in evidence, which reads:

“Boise, Idaho, Feb. 13, 1903.

Hon. J. T. Barber,

Eau Claire, Wis.

My dear Sir”:

Eliminating the first two paragraphs, it reads as follows:

“I have not been able to proceed as rapidly in the purchase of titles on Crooked river as had been my intention. Kinkaid represented for the last month

(Deposition of James T. Barber.)

that the situation was critical, and that there has been considerable scurrying to and fro on the part of grafters and other interests that want to gain a foothold in that section. Up to the present time my investigation of the adverse interests leads me to the conclusion that they have no matured plans in mind, but that they wanted to get a group of claims and then endeavor to procure a sale. I think we have everything well in hand and know we control the situation. We have drawn on you again today through the Commercial Bank at Caldwell for \$25,000.00. I have not received a report today at the time of this writing as to the title, as to the amount of title taken. Will send you that information later.

Very truly,

FRANK STEUNENBERG.

P. S. I neglected to say at the start that a jurat has been taken on each of the options; I didn't give that portion of them."

Q. What does that postscript refer to?

A. It refers to options on various pieces of land we were trying to secure for the millsite near Boise.

Q. I show you a letter from the files of the company, marked 186. Did you receive that letter from Governor Steunenberg on Feb. 19, 1903?

A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence.

"Boise, Idaho, Feb. 14, 1903.

J. T. Barber,

Eau Claire.

Dear Sir: Just taking train for home. Am in-

(Deposition of James T. Barber.)

formed by Kinkaid that combine is broken and he is taking titles of the affected ones.

Have taken 33 titles on Crooked river up to this morning.

Hastily,

FRANK STEUNENBERG.

Q. I show you a copy of letter in the copy-book of the company on page 76; is that a copy of letter you wrote to Mr. Steunenberg? A. Yes, sir.

By Mr. BUNDY.—We offer that letter in evidence, which reads as follows:

“Eau Claire, Feb. 17, 1903.

Hon. Frank Steunenberg,

Boise, Idaho.

Dear Sir: Am sending you today by express 83 deeds running to A. E. Palmer together with receiver's receipts, all for record. In the absence of Mr. Moon, these are all the deeds I am able to find and presume it covers the whole transaction in the Basin up to the present time including, I think, some ninety entries. I am in receipt of your letter of the 12th and note that you have finally succeeded in securing an option from Caston, and am waiting anxiously the arrival of a copy of the document as I am somewhat apprehensive as to its contents objected to by Mr. Haines.

I am a little worried over the combination of the entrymen, your holding titles on Crooked River, so long as there are but very few included in this, it is immaterial, but if it becomes general at all, it may be serious. Are you sure that your friend Kinkaid

(Deposition of James T. Barber.)

is not at the bottom of this? Note what you say about money matters and will honor your draft as it appears. Have nothing new to report from this end of the line.

J. T. BARBER."

Q. I now show you a letter taken from the files of the company marked 188 and ask you if you received that letter on Feb. 24, 1903?

A. Yes, sir.

Q. From Governor Steunenberg?

A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence.

"Boise, Idaho, Feb. 18, 1903.

J. T. Barber,

Eau Claire, Wis.

My dear Sir: Have taken 53 titles on Crooked river to date. The adverse movement here, didn't last long after we commenced buying, but it was sufficient to cause some apprehension. The parties in the movement represented that they were backed by New York capital, and that the same outfit had purchased many thousands of acres in Oregon within the last two years. They went so far as to send a man in there (Crooked River.) He came out a day or so behind Taylor. I think the man who went in is named McMilland. He comes from Roseburg, Oregon. If you know of any land operator there, you may be able to locate him and his crowd."

Q. Mr. Pearl, was one of the men from whom you bought part of your millsite?

A. Yes, sir.

Q. Mr. Caston was another?

A. Yes, sir.

(Deposition of James T. Barber.)

Q. And Mr. Drake, I believe a third?

A. I think so.

Q. And Mr. McMahon a fourth?

A. Yes, sir.

Q. And these were all bought in the first instance on option? A. Yes, sir.

Q. And the reference to Pearl option and Caston option refers to the millsite? A. Yes, sir.

Q. You never procured any options on timber and stone claims? A. No, sir.

By Mr. BUNDY.—This letter is signed. “Yours truly, Frank Steunenberg.”

Q. I show you a letter taken from the files of the company and ask you if you received that from Governor Steunenberg on the 20th day of March, 1903?

A. Yes, sir.

By Mr. BUNDY.—We offer letter 204 which reads as follows:

“Caldwell, Idaho, March 16.

Dear Mr. Barber.

I wrote you from Boise last night that I would draw on you that day for \$10,000.00. My intention was to go home that evening, but some features of the Boise situation held me there until yesterday. I am drawing on you today for \$20,000.00, as I didn't draw for the \$10,000.00. Have taken sixty titles on Crooked river. Expect to call Mr. Taylor here in a day or two to settle or proceed to file regarding further entries.

Your truly,

FRANK STEUNENBERG.”

(Deposition of James T. Barber.)

I show you letter from files of the company, number 209. Is that a letter you received from Governor Steunenberg on April 6, 1903? A. Yes, sir.

We offer that letter in evidence.

“Caldwell, Idaho, April 3, 1903.

James T. Barber,

Eau Claire, Wis.

Dear Sir: By express today I send 71 titles for Crooked river purchases. The first four I took before you came on in order to hold the situation. One or two of them run to me and some to Mr. Palmer. The balance of them run to Mr. Rand. I will deed those of them in my name when you desire. A brief (not complete) financial statement follows:

Receipts:

Drafts received \$65,000.00

Disbursements:

71 titles at \$950.00—\$67,450.00.

Options:

Caston, Diake, Bedal and McMahon \$1000.00.

Borah account \$350.00.

Total \$68,800.00.

I have unsettled accounts with Taylor, Stevenson, the engineer and some personal expenses. Have been unable to get these out together, but think the total will not exceed \$400.00 or \$500.00. Am drawing on you for \$10,000.00 to take care of over draft and April (est.) items.

Very truly,

FRANK STEUNENBERG.”

(Deposition of James T. Barber.)

Q. What is meant Mr. Barber, by April est. items?

A. The interpretation that I put upon that is an estimate of the number of titles, he would buy in April. He didn't know but that there were a few more, and he was drawing for enough that he estimated he would get in that month.

Q. This Bedal option?

A. That is a millsite, affair. Mr. Stevenson was a local engineer that served at our millsite there.

Q. Mr. Barber, this first item made by Governor Steunenberg to you accounted to you for any of the money which had been sent directly to him or which had been paid to him by Mr. Palmer, was it not? On any account; that was the first statement made, was it not of his disbursements?

A. I am not familiar with that.

Q. Now, practically all of the large majority of these Crooked River entries were bought during the first month after they commenced buying in February and March, 1903? A. Yes, sir.

Q. And at that time practically all the Basin titles you ever took were taken in?

A. With the exception of 6-4.

Q. Was that about March or first of April, '03, during that summer, there was not very much doing in the purchase of timber in Idaho?

(No answer.)

Q. I show you copy of telegram on page 260 of the Barber Lumber Company book; is that copy of a telegram you sent Steunenberg?

(Deposition of James T. Barber.)

A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence. It reads:

“Eau Claire, Wisconsin, September 28, 03.
Hon. Frank Steunenberg,
Caldwell, Idaho.

Can not pay your draft until you wire reasons for drawing.

BARBER LUMBER COMPANY.”

Q. I show you a telegram taken from the files of the company, marked 274 is that a telegram received by you from Governor Steunenberg in answer to the last telegram offered in evidence?

A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence.

“Boise, Idaho, Sept. 28-29, 03.

Barber Lumber Company,
Eau Claire, Wis.

Money was needed account Crooked river titles. First National Fund exhausted. Letter.”

Q. Mr. Barber, what was meant by First National Fund?

A. Why, the money we sent him was deposited in the First National Bank of Idaho at Boise. It must refer to the balance in the bank.

Q. Some of the money seems to have been sent on his drafts; was \$50,000.00 deposited to his credit in the First National Bank at Boise? First National Bank of Idaho?

A. I have no clear recollection of that detail.

By Mr. BUNDY.—I offer in evidence the account

(Deposition of James T. Barber.)

of Frank Steunenberg found on page 3 of the ledger of the Barber Lumber Company, and particularly the item dated June 30, 1903. "To cash fifty thousand dollars," referring to cash book page 7, and I offer entry on page 7 of the cash book as follows: "Frank Steunenberg, Jan. 23,-03, deposited to your credit fifty thousand dollars."

Q. I show you copy of letter page 502 of copy-book of Barber Lumber Company; is that a letter you wrote Mr. Chapman on or about that date?

A. Yes, sir.

Q. It reads:

"Eau Claire, Nov. 16, 04.

Replying to your of the 12th, would say that the understanding between Governor Steunenberg and ourselves with reference to claims in the Crooked River district was a verbal one, and we think it has been fully complied with, so far as we are concerned."

By Mr. GORDON.—That is objected to as incompetent, irrelevant and immaterial.

(By Mr. BUNDY.)

Q. I show you letter from files of the company and ask you if that is a letter received by the company Oct. 12, 1903, with your notation at the bottom?

A. Yes, sir.

By Mr. BUNDY.—We offer that letter in evidence, number 281.

(Deposition of James T. Barber.)

“Caldwell, Idaho, Oct. 9, 03.

S. G. Moon,

Sec’y. Barber Lumber Company,
Eau Claire, Wis.

Dear Sir: Am drawing on you today for \$13,000.00 (separate drafts) of which \$10,000 is needed to take up Crooked river title soon, and \$3,000.00 for Basin titles. Have submitted draft of my Basin report to Mr. Chapman and have explained same to him to his satisfaction. Have also gone over situation as to Basin and Crooked river purchases covered by above drafts and same meets his approval, notice of which he has no doubt given you.

Very truly,

FRANK STEUNENBEFG.

P. S. Will be in Boise to morrow to meet Mr. Hughes.”

Notation at bottom: “Wrote Lawrence we would pay draft.

J. T. BARBER.”

Q. Lawrence was L. G. Chapman?

A. Yes, sir.

Q. That Mr. Hughes therein referred to was representative of the Northern Pacific Railway, who was going to Boise at that time to place some scrip which you had purchased from the Northern Pacific Railway Company? A. Yes, sir.

Q. Some time subsequent to that you did place some unsurveyed scrip which you did purchase from the Northern Pacific Railway Company, did you not?

A. Yes, sir.

(Deposition of James T. Barber.)

Examination adjourned to May 12, 1909, at 9:30 A. M. at this office in the City of Eau Claire, Wisconsin.

9:30 A. M., May 12, 1909, examination resumed.

(By Mr. BUNDY.)

Q. Mr. Barber, I show you plat book, printed on cover N. W. Lumber Company, marked Plaintiff's Exhibit 141A," and having the file mark of the clerk of the United States Circuit Court, showing it was filed March 11, 1909; will you kindly look over that book at your leisure and particularly with reference to the plat showing lands in town 6 range 4. You notice on page 7 of the book there is a plat of town 6 north, of range 4 east, on which there are a lot of red ink lines straight lines, dots. A. Yes, sir.

Q. I will ask you as to whether or not those dots or dashes on there were made by you.

A. They were not.

Q. Did you ever see them before?

A. I never did.

Q. Are there any marks or indications on that page with reference to 6-4 in your handwriting?

A. No, sir.

Q. Are there any in the book in your handwriting? A. No, sir.

Q. Do you know Mr. Gust D. Hosely, formerly of Neillsville, this State? A. Yes, sir.

Q. Do you recollect that Mr. Hosely made a flying trip to Idaho some time in the summer of 1903, to look the country over at your request?

A. Yes, sir.

(Deposition of James T. Barber.)

Q. Do you recall that after his return here from his first trip, you wrote him in Neillsville to come up here to discuss the question of employment with him? A. Yes, sir.

Q. I show you letter on page 217; copy of letter in the letter-press copy-book of the company and ask you if that is a copy of a letter you wrote him.

A. Yes.

By Mr. BUNDY.—We offer the letter in evidence.

“Eau Claire, August 26, 03.

Mr. Gust D. Hosely,
Neillsville, Wis.

Dear Sir: I would like to have a general talk with you with reference to logging operations on the Boise river at your earliest convenience. Can you not make a trip over here some time during the next week or so.

Very truly yours,

JAMES T. BARBER.”

Q. I now show you telegram taken from the files of the company and ask you if you received that telegram from Mr. Hosely on August 31, 1903?

A. Yes, sir.

By Mr. BUNDY.—We offer that telegram in evidence.

Neillsville, Wis., Aug. 29, 03.

James T. Barber,
Eau Claire, Wis.

I will be there in the morning.

GUST HOSELY.”

Q. Mr. Hosely came to see you at that time pur-

(Deposition of James T. Barber.)

suant to that telegram? A. Yes, sir.

Q. And what was the result of the negotiation had at that time which would be on August 31?

A. Why, I talked with him about taking charge of logging operations of the Barber Lumber Company on the Boise River and he seemed to be favorably impressed, but before deciding the question he wanted to go back and consult his wife and consider it.

Q. And he did go back to Neillsville, did he?

A. Yes, sir.

Q. I now show you a telegram taken from the files of the company and ask you if that is a telegram you received from Mr. Hosely on September 12, 1903, or about that time?

A. It was phoned to my house on the 11th and received at the office on the 12th.

Q. The receiving mark on there is made at the office? A. Yes, sir.

Q. And the notation on that is the handwriting of whom? A. Mr. Cotten.

By Mr. BUNDY.—I offer that telegram in evidence which reads:

“Neillsville, Wis., Sept. 11, 03.

J. T. Barber,

Eau Claire, Wis.

Will see you at Eau Claire House at 7:30.

G. D. HOSELY.”

Notation received by witness is as follows:

“Phoned to Mrs. Barber 9:11, 03. 4:55 P. M.

COTTEN.”

(Deposition of James T. Barber.)

Q. Mr. Hosely came to Eau Claire pursuant to that telegram at that time on the 11th?

A. Yes, sir.

Q. Was he here with you more than one day Mr. Barber, more than the following day?

A. I don't think so.

Q. Did you make final arrangements with Mr. Hosely at that meeting? A. Yes, sir.

Q. Mr. Hosely, Mr. Barber has conceived the idea some way and has testified in this case that at this meeting he had with you at Eau Claire in which he agreed to go to Boise, you delivered him this plat book. Plaintiff's Exhibit 141A; what is your recollection on that?

A. Mr. Hosely is mistaken; I didn't give him the plat book; I don't think I ever had the plat book.

Q. And he also testified that at the time you gave it to him, you said to him in substance that the plat book was a plat of the lands of the company and that at that time as he first remembered it, the red markings or dots indicated lands in 6-4 were in the book on September 12, on the day he was here at Eau Claire, two days before that land was ever filed upon. I ask as to whether or not at that time you had any knowledge in any way—I will ask you first whether the Barber Lumber Company had any lands or interested in lands at 6-4 at that time?

A. No, sir.

Q. Did you at that time have information as to what lands were going to be or were open in that town under the Timber and Stone Act?

(Deposition of James T. Barber.)

A. No, sir.

Q. Did you have any knowledge at that time of the land which the State of Idaho was selecting under its preference right in that town?

A. No, sir.

Q. Do you know in whose handwriting the town and range is at the head?

A. Mr. Moon's, I think.

Q. Mr. Barber, will you state on the record with reference to this town of 6-4 how early in your proceedings there, you began watching it with a view of acquiring it and why?

A. I don't know of my own knowledge but very little about 6-4 lands. The first trip that was made by any of us up into the Boise Basin, we had to go through or did go through or sufficiently near to see a large body of timber which was situated there in town 6-4 which had not been surveyed, and consequently was not obtainable under any of the ordinary ways of using our land scrip. From that time on from time to time the discussion came up of doing something or seeing if something could not be done to induce the Governor to make survey and throw that town open. Whether he took any active part in securing the survey or not, I don't know; I didn't take any individually. The survey was finally made by the Government, and in the summer 1903, it was finished and opened up.

Q. With reference to the location of that town in your plan, was it tributary to it?

A. The timber on 6-4 was the most valuable tim-

(Deposition of James T. Barber.)

ber in the Boise Basin proper. It was the last town of any available timber of Grimes Creek, and was very desirable timber and the most accessible. We were satisfied that the logs could be driven from where this timber was growing to the mill.

Q. And there had been negotiations from the time the State made its selection down to almost to-day between your company and the State with a view to acquiring the holding in that town?

A. To within a week or two.

Q. And I think Mr. Borah or Mr. Steunenberg or some of your representatives tried to induce the State to make its selection elsewhere and not in that town?

A. Yes, sir.

Q. I said positively down to within two weeks; I don't know positively about that; that is information that comes from the Boise office.

Q. The State lands in 6-4 are so located as to make it necessary for you to go through other lands in getting to the lands you subsequently acquired in that town?

A. Yes, the river runs right along close to them and we would have to log over that to get to the other.

Q. I notice in the early estimates made in 1902, partly by Mr. Conner, all this entire town of 6-4 was cruised and estimated. Why was that done?

A. It was so because we saw the almost absolute necessity of handling that timber in connection with the Boise Basin proper the great desirability of it and we wanted to be prepared when it did come into

(Deposition of James T. Barber.)

the market to act promptly.

Q. And to obtain an estimate of the timber tributary to Boise? A. Yes, sir.

Q. This town 6-4 was finally surveyed and thrown open to entry making it available either by timber and stone entries or use of lieu land scrip some time in the summer or fall of 1903; I ask you Mr. Barber, what if any preparations you folks made for acquiring lands in that town when it was available?

A. Of course we directed Governor Steunenberg to make preparations to use lieu land scrip in the town, and proceed to get a knowledge of where we could get prices on lieu land scrip for prompt action. I think we bought scrip and had it on hand for that purpose.

Q. Now, Mr. Barber, do you know prior to the time that that land was actually located or subsequent, that timber and stone men were going to locate upon it, prior to their filing I mean? A. No.

Q. Did you authorize any person, Governor Steunenberg or any other person, to solicit or induce people to enter or file upon timber and stone claims in that town? A. No, sir.

Q. Or elsewhere? A. No, sir.

Q. Were any timber and stone filings made in that town with your knowledge? A. No, sir.

Q. Was Patrick Downs, Wells, Kinkaid, Pritchard or Steunenberg or any other person employed by you or your company, or authorized by you or your company to solicit or induce individuals to enter timber and stone claims in that town or else-

(Deposition of James T. Barber.)

where? A. No, sir.

Q. Now Mr. Barber, if you will step aside I will show some letters to Mr. Moon.

[Deposition of S. G. Moon, on Behalf of the Defendants (Recalled).]

S. G. MOON, recalled for examination, testified as follows:

By Mr. BUNDY.—Mr. Moon, I show you this plat book referred to in Mr. Barber's examination as plaintiff's exhibit and marked 141A and ask you if you ever saw that book before?

A. I think so, because some of the numbers indicating the towns and ranges seem to be in my handwriting.

Q. And is the index to it found on the first fly leaf in your handwriting?

A. I think it is; yes, sir.

Q. Now, Mr. Moon, calling your attention to page 7 of the book containing a plat of town 6 range 4, did you make the red marks or dots found on that page? A. No, sir.

Q. Do you know who did make them?

A. I do not.

Q. Did you make the blue lines by which certain portions are platted out in the town?

A. No, sir.

Q. I show you copy of letter found on page 223 of the copy-book of the company and ask you if that is a copy of letter you wrote and mailed to Governor Steunenberg at that date? A. Yes, sir.

(Deposition of S. G. Moon.)

By Mr. BUNDY.—We offer that letter in evidence.

“Eau Claire, Sept. 3, 03.

Honorable Frank Steunenberg,
Caldwell, Idaho.

Dear Sir: I have your letter of August 30. We are rather disappointed to learn of the sale of the Goodwin property but do not believe we would care for it as such price as \$36,000.00.

We have a letter from Mr. Souther with reference to furnishing his company power at Idaho City, and Mr. Barber will probably make him a proposition in a day or two. I enclose herewith a plat book in which I marked the lands covered by the deeds which we have. Will you please go over these and add such lands as we have acquired since I forwarded the deeds to you, bringing it up to date? Shall probably send Mr. Hosely out there in a short time to look over land in the Crooked River country with the idea of putting in some logs this winter. We wish that you would let him have this book so that he can tell on what lands to log. We are figuring on buying some unlimited forest reserve scrip which as we understand it, is applicable to unsurveyed lands. Will you please advice us as soon as possible how much of this we could use to advantage in the town on the north fork or any other towns which are liable to be included in the timber reserve.

Please advice me as soon as convenient how you are getting along with recording the deeds and how soon we may expect the deeds to be returned to this

(Deposition of S. G. Moon.)

office. Also please advise me at once of any of the Basin deeds which had to be changed in any way, so that we may get a new deed from Mr. Palmer without delay.

Yours very truly,

S. G. MOON,

Secretary."

Q. Mr. Moon, is that plat book shown you, marked 141A the plat book referred to in that letter?

A. Yes, sir.

Q. And was that plat book sent by you to Mr. Steunenbergh for delivery to Hosely in your letter of September 3-03?

A. Yes, sir.

Q. Was the red markings shown on page 7 of that book in that book at the time you sent it?

A. No, sir.

Q. Are they your markings?

A. No, sir.

Q. Do you know whose they are?

A. No, sir.

Q. Mr. Moon, you are familiar with the lands known as 6-4 lands, are you not?

A. Yes, sir, to a certain extent.

Q. When you were out on your first visit to Idaho, June, 1902, did you have your attention attracted to these lands?

A. Yes, sir.

Q. At that time state as to whether or not the town was open to entry by any means?

A. No sir, it was not.

Q. Did you cause that town to be estimated or cruised during the summer of 1902?

A. Yes, sir.

(Deposition of S. G. Moon.)

Q. And from that time until now, state as to whether or not you have been desirous of acquiring lands in that town? A. We have; yes, sir.

Q. Is there anything peculiar about the locality of that town that makes it desirable to your plan?

A. Yes, sir, on my first trip to Idaho in June, 1902, at which time I took Mr. Connors there with me to estimate lands we took a trip into the Basin which was a general exploration trip. We drove from Idaho City across through the State lands to Centerville and from Centerville north through town 7-5, I think it was to Pioneerville, north from there into town 8-5 to a point very near the summit between the Basin and the valley of the east fork of the Payette River, possibly the south fork they call it, and from there went back to Centerville and down across Granite Creek near the mouth. That is a branch of Grimes Creek which comes into Grimes near the corner of 6-4. From there we went up into 6-4 where we saw the best timber. It seemed to be the best timber we had seen and we were particularly attracted by several very large trees, and before I left I told Mr. Connors and also when I got back to Boise I told Governor Steunenberg, in telling Mr. Palmer that we wanted the estimators to make a general examination of all the timber in the Basin where the quantity per acre would warrant development, and I particularly requested that they have Mr. Connors prove 6-4 thoroughly. It seemed to be very desirable timber. It was the lowest down on the river, or Grimes Creek of any timber in quan-

(Deposition of S. G. Moon.)

tity in the Basin. I think at that time that the Governor told me that the Government had planned to survey it and throw it open, but possibly not then, but it seems to me he told me that the plan was to have it surveyed then or soon.

Q. So that your general trip of exploration in general was not confined to lands which you owned or in which you had any outstanding obligation to buy? A. No, sir.

Q. And included lands owned by the Government which were not as yet on the market?

A. Yes, sir, it was more particular to see the lands which might be bought.

Q. I will ask you the general question Mr. Moon, if all of this cruising and exploring on your part and your cruisers was for the general purpose of determining as to whether or not there was sufficient timber tributary to Boise to warrant the development of a large plant at Boise? A. Yes, sir.

Q. If such cruising and estimating had resulted in finding a comparatively small amount of timber in the Basin, would it have been practicable or advisable to construct a plant at Boise?

A. No, sir.

Q. So your investigations were to include all lands that might be bought in the future?

A. Yes, sir.

Q. I neglected to ask you Mr. Moon, if this plat book you have mentioned 141A, if you have ever seen it since the time you sent it out to Mr. Steunenberg in the letter I show you?

(Deposition of S. G. Moon.)

A. Not to my knowledge, no, sir.

Q. You learned some time in the summer of 1903 of the fact that town 6-4 was thrown open to entry, did you not Mr. Moon, some time before it was entered?

A. I think I did; yes, sir.

Q. Do you recall what steps were taken by your company for acquiring lands in that town?

A. Not definitely, I remember it was our intention at all times to lay scrip on 6-4 lands at the earliest opportunity.

Q. Do you recall the fact that a large amount of scrip had been purchased and was in your hands or was held by Governor Steunenberg for that purpose?

A. Yes, I remember that.

Q. I will ask you generally as to whether or not your company authorized Governor Steunenberg, Downs, Kinkaid, Wells, Pritchard or any other person to solicit or request or induce individuals to make filings under the Stone and Timber Act in that town or elsewhere?

A. No, sir.

Q. Were any filings made in that town under the Timber and Stone Act with your knowledge or by your request?

A. No, sir.

Q. Were any of the filings which you made in that town made under the Timber and Stone Act at your request Mr. Moon, yourself or your company?

A. No, sir.

Q. Made with knowledge or request of your company?

A. No, sir.

Q. Do you recall whether any scrip was laid in

(Deposition of S. G. Moon.)

that town? A. I do not know of any that was.

Q. Do you know of any explanation that was given you because it was not laid?

A. Yes, sir.

Q. State that.

A. I was informed by Governor Steunenberg that when he got around to laying his scrip that the entrymen, timber and stone entrymen had gotten ahead of him, so that there was no land available for scrip. I think he made—I think it may possibly have been the fact that he was not prepared by reason of some power of attorney that he endeavored to get from me on the first day that the land was open. In any event the timber and stone entrymen he reported, were waiting in line at the land office so that he was unable to lay any scrip.

Q. As bearing upon the intentions to scrip 6-4 land, I wish to offer in evidence some letters now.

Mr. Moon, I show you copy of letter page 1300 of copy-book of D. R. Moon, is that a copy of a letter you wrote and mailed to A. E. Palmer on or about the date shown? A. Yes, sir.

By Mr. BUNDY.—We offer that letter in evidence.

“Eau Claire, July 14, '02.

Mr. A. E. Palmer, Spokane, Washington.

Dear Al: I have just wired you as follows: ‘Our efforts to get scrip have failed. Get us 10 thousand at best price possible.’ We will probably, eventually want more than ten thousand acres, so if you can get a good price you had better take an op-

(Deposition of S. G. Moon.)

tion on five thousand or ten thousand more and give us a chance to consider it. If the seventy-five thousand acres of \$4.50 scrip was sold, there, you ought to be able to get fifteen or twenty thousand at a good price. I have a wire from Steunenberg as follows: 'Situation here most satisfactory, party is recalled, what is the news.' so I suppose everything is clear now to the issuing of patents. I have your of the 10th enclosing Conner's report in 6-4. I should say that Conners and also any one else cruising land to be located by scrip should not spend time on lands that will not run eight thousand feet yellow pine per acre on the average.

Yours truly,

S. G. MOON."

Q. Mr. Moon, that reference in here to Conners report in 6-4, in this letter that is dated July 14, '02, referred to his first estimate or cruise when he was first out there?

A. Yes, sir.

Q. I don't know that he was ever there again?

A. Not that I remember of.

Q. But that was the result of the instructions you gave when you were there in June?

A. Yes.

Q. And before this town was on the market at all?

A. Yes; was that as early as July 14, '02?

By Mr. BUNDY.—I infer from this letter that Mr. Connor was cruising it with a view of scriping it?

A. Yes, sir.

Q. Perhaps you will remember about that telegram, do you not Mr. Moon, referred to in that let-

(Deposition of S. G. Moon.)

ter to the party being recalled?

A. Yes, sir.

Q. Have I asked you about that?

A. Yes, sir.

Q. I show you copy of letter found on page 227 of the copy-book of the company, is that a copy of a letter written by Mr. Barber, as President, and sent by him to Mr. Steunenberg? A. Yes, sir.

By Mr. BUNDY.—I offer that letter in evidence.

“Eau Claire, Sept. 4, 03.

Hon. Frank Steunenberg,

Boise, Idaho.

We have arranged with the Northern Pacific Company for securing a certain amount of scrip, available on unsurveyed Government land, and think it advisable to, locate a bunch of this on the north fork of the Boise River in 9 east. You may also think it advisable to include a little of the land in town 8 range 8 east, on Crooked River above the land already secured by us. Will you please have Mr. Downs and a competent surveyor ready to take the representative of the Northern Pacific Road on this land at once upon his arrival in Boise. He will have a letter of introduction to you. It is necessary for the Northern Pacific to enter these lands in their own name and they in turn will deed it to us. I don't think it would be well to pay the price we have to pay in order to secure this land, unless you can locate at least 12,500 to the acre, and in a reasonable accessible location. Please be prepared to take prompt action on the arrival of the

(Deposition of S. G. Moon.)

Northern Pacific Railway Company's representative in accordance with a telegram I will send you as soon as I am informed of the date of his departure.

Yours very truly,

JAMES T. BARBER,
President."

Q. I show you copy of a letter found on page 345 of the copy-book of the company; is that a copy of a letter written and mailed to Governor Steunenberg at or about this date? A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence.

"Eau Claire, Dec. 10, 02.

Hon. Frank Steunenberg,
Caldwell, Idaho.

Dear Sir: In view of the advertised activity which Governor Scofield is taking in timber along the Boise River, it seems to us that we can ill afford to delay any longer taking such action as is necessary to get what we want in the way of timber and protect our position. Have you done anything as yet towards laying scrip on the land which we decided while in Boise last Sept.? It seems to us that we should lay that scrip on the rest of the block as soon as possible. We should also take steps at once to secure the state land in 6-5 and 7-4, and do what is possible toward having the survey of 6-4 approved so we can scrip what we want in that town.

Yours very truly,

S. G. MOON."

A. It seems to me from reading that letter that

(Deposition of S. G. Moon.)

that town had been surveyed before that and the survey had never been approved.

By Mr. BUNDY.—I think that is so.

Q. I show you a copy of a letter on page 135 of the company's letter-book; is that a copy of a letter you wrote and mailed Governor Steunenberg at or about the date? A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence.

“Eau Claire, May 11, 1903.

Hon. Frank Steunenberg,
Caldwell, Idaho.”

First paragraph omitted.

“I also think we should lay the scrip on land in 7-5 and 8-5 which we selected, as soon as possible. Have you done anything yet toward having the state lands in 6-5 and 7-4 offered for sale? What do you think will be our chances for laying scrip in 6-4”?

Q. I show you copy of a letter, page 181 of the copy-book of the Barber Lumber Company copy-book; is that a copy of a letter you wrote and mailed Steunenberg on that date? A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence.

“Eau Claire, July 3, 03.

Hon. Frank Steunenberg,
Caldwell, Idaho.

Dear Sir: As Mr. Barber wired you yesterday, he will be unable to leave here for a couple of weeks. We trust you will do everything possible to obtain for us as much desirable land in 6-4 as possible.

Yours very truly,

S. G. MOON.”

(Deposition of S. G. Moon.)

Q. I show you telegram taken from the files of the company and ask you if that is a telegram you received from Governor Steunenberg, number 264, on or about its date? A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence.

“Boise, Idaho, Sept. 7, 03.

S. G. Moon,

Eau Claire, Wis.

Send me at once your general power of attorney. May want to lay some scrip soon. You can revoke later.

FRANK STEUNENBERG.”

Q. I show you copy of telegram, page 233, in letter-book; is that a copy of a telegram you sent Steunenberg on or about that date?

A. Yes, sir.

By Mr. BUNDY.—I offer that in evidence.

“Eau Claire, Sept. 8, 03.

Hon. Frank Steunenberg,

Care of Idah-ha Hotel,

Boise, Idaho.

Am sending power of attorney today,

S. G. MOON.”

Q. Was that telegram in response to the telegram just preceding and offered in evidence?

A. Yes, sir, it was.

Q. And the power of attorney therein referred to, related to what Mr. Moon?

A. It was the power of attorney; well I know what he wanted now, he wanted my power of attorney because the scrip, that body of scrip hap-

(Deposition of S. G. Moon.)

pened to be in the name, but I think I misunderstood.

By Mr. BUNDY.—Yes, you did. He wanted power of attorney so he could lay scrip which he had in his possession and which stood in your name.

A. Yes, sir.

Q. I show you letter written on same date, September 8, and found at page 233 of the company's copy-book; did you write and mail that letter on that date? A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence.

“Sept. 8, 03.

Hon. Frank Steunenberg,

Care Hotel Idan-ha,

Boise, Idaho.

Dear Sir: I received your wire last night asking for power of attorney. I didn't remember at first that the scrip was all in my name and that you wanted some sort of a power from the Barber Lumber Company, and so I wired you that we would attend to it when Mr. Barber returned on Thursday. It afterwards occurred to me that the corporation could not give a power of attorney for the transfer of real estate which led me to remember that the scrip was in my name. I wired you this morning that I was sending power of attorney today. I enclose same herewith so there has been no time lost. Hoping you will receive the same by the time you need it, I am,

Yours very truly,

S. G. MOON,

Secretary.”

(Deposition of S. G. Moon.)

Q. I show you telegram taken from the files of the company, marked number 270; did you receive that telegram from Gov. Steunenberg?

A. Yes, sir.

Q. On or about its date? A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence.

“Caldwell, Idaho, Sept. 8, 03.

S. G. Moon, Eau Claire, Wis.

Scrip I have here is in your own name. I cannot use it without your general power of attorney. Mail it at once.

FRANK STEUNENBERG.”

Q. I show you telegram taken from the files of the company, marked 269; is that a telegram you received from Gov. Steunenberg on its date?

A. Yes, sir.

By Mr. BUNDY.—We offer it in evidence.

“Boise, Idaho, Sept. 9, 03.

S. G. Moon,

Eau Claire, Wis.

Send power of attorney to Boise. Must have it Sunday to do any good. Answer.

FRANK STEUNENBERG.”

Q. I show you another telegram taken from the files of the company 267; did you receive that from Gov. Steunenberg on that date?

A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence.

(Deposition of S. G. Moon.)

“Boise, Idaho, Sept. 10, 03.

S. G. Moon,

Eau Claire, Wis.

Send duplicate power of attorney here quick.
Need it for recorder.

FRANK STEUNENBERG.”

Q. I show you copy of a letter or telegram found on page 236 in letter-book; is that a letter or telegram you mailed to Gov. Steunenberg?

A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence.

“Eau Claire, Sept. 10, 03.

Hon. Frank Steunenberg,

Care Idan-ha Hotel,

Boise, Idaho.

Mr. Chapman arrives at Boise Sunday night with additional power of attorney.

S. G. MOON.”

By Mr. GORDON.—Is that a letter or telegram?

By Mr. BUNDY.—That is a telegram?

Q. Mr. Moon, do you recollect that it was the general expectation that 6-4 would be open on July 15, instead of September 15? Yes, sir.

Q. And that the delay of sixty days was caused as you understood it by an order giving to the State sixty days preference rights? A. Yes, sir.

Q. I show you telegram on page 180 of the copy-book signed, “James T. Barber, President.”

Q. Is that a copy of a letter and telegram appearing in the records of the company as sent by its president? A. Yes, sir.

(Deposition of S. G. Moon.)

By Mr. BUNDY.—We offer that in evidence.

“Eau Claire, Wis., July 2, 1903.

Hon. Frank Steunenberg,

Boise, Idaho.

Cannot leave here for two weeks. Do not neglect town 6 range 4 the 15th.

JAMES T. BARBER,
President.”

Q. What did that telegram refer to Mr. Moon?

A. That telegram referred to locating lands in 6-4 with scrip and Mr. Barber understanding that the town would be open for entry on July 15th.

Q. No scrip was placed at that time in 6-4?

A. No, sir.

Q. And the Barber Lumber Company as I understood it afterwards purchased a good many claims in that town which were entered by timber and stone entrymen?

A. Yes, sir.

Q. Did you buy any claims from entrymen or authorize any person to buy for you any claims from any entrymen prior to the time that the final receipts and certificates at the land office was issued?

A. No, sir.

Q. Do you know of any having been bought prior to that time?

A. No, sir.

Q. Was you ever informed by anyone in any manner of the purchase of any timber and stone entry by or in behalf of your company, of yourself or Mr. Barber prior to the issuance of final receipt and certificate?

A. No, sir.

[Deposition of James T. Barber, on Behalf of the Defendants (Recalled).]

JAMES T. BARBER, recalled, testified as follows:

By Mr. BUNDY.—Mr. Barber, after you had learned of the failure to procure land in town 6-4 by the use of scrip was anything further done by you or your company until at or about the time these claims came on to the market?

A. No, sir.

Q. And at or about the time that final receipts were made, did you authorize Governor Steunenberg to go on and buy these at a stipulated price?

A. I think so. That is my recollection of the transaction.

Q. They were not part of the Basin land and included in his contract? A. Yes, sir.

Q. And you authorized him to buy them at the same rate he had paid for the other Basin lands, \$800.00 a claim? A. Yes, sir.

Q. I show you copy of a letter, page 285 of the copy-book of the company; is that a letter you wrote Governor Steunenberg on or about that date?

A. Yes, sir.

By Mr. BUNDY.—We offer that letter in evidence.

“Eau Claire, Nov. 13, 03.

Hon. Frank Steunenberg,

Boise, Idaho.

Dear Sir: Lands which you may buy in town 6 range 4 can be deeded to George S. Long, Tacoma,

(Deposition of James T. Barber.)

Washington, and I am satisfied that he will take care of the matter to the satisfaction of all parties.

Yours very truly,

JAMES T. BARBER."

Q. Mr. Barber, will you explain in your own way what if any arrangements you had made with Mr. Long and for what purpose these deeds were taken in his name?

A. Mr. Long, as the evidence has shown was formerly connected with the Northwestern Lumber Company. I was very well acquainted with him. At some time previous to our Idaho adventures, I think I met Mr. Long or had some correspondence with him and he made the statement—it may have been by correspondence—and he made the statement he was purchasing some timber and stone claims in a certain locality and he was afraid that if the owners of the claims he wanted to purchase knew that the Warehouser Timber Company was buying in that locality, the price would be very materially enhanced, and he wanted to know if there was any objection to his taking titles, placing titles of such claims in my name, and I told him it was alright. When the purchase of the claims in 6-4 came up, it seemed to me whoever was actively engaged in buying these claims would be able to get them at a less price if it were not known that the Barber Lumber Company was buying them and for that reason, and that reason given, I gave Mr. Steunenberg George Long's name, as I had pre-

(Deposition of James T. Barber.)

viously written Mr. Long; I know I had written him. We were situated much as he had been and we were going to put some titles in his name or ask the privilege. The exact arrangement we made with him is not clear in my mind, but I wrote him we were going to do that.

Q. I show you memorandum copy of what purports to be a letter from you to Mr. Long dated Dec. 10, '00. Is that a copy of a letter you kept?

A. That is copy of a letter I wrote to Mr. Long with reference to taking up titles in my name. Now the circumstances of why the copy was preserved in that way I cannot remember; it may have been written in Minneapolis and the copy brought down here.

Q. Does that refresh your recollection as to why you wanted Mr. Long to take titles in your name?

A. Oh, yes; this matter came through Mr. McKnight who was at that time President of the Northwestern Lumber Company and lived in Minneapolis. He was a stockholder in Mr. Long's Company, and Mr. Long, it seems, had a talk with Mr. Knight with reference to putting these titles in my name, and Mr. McKnight submitted the question to me, and I wrote to Mr. Long this letter.

By Mr. BUNDY.—We offer that in evidence. Number 342, dated at Eau Claire, Dec. 10, '00.

“Mr. George S. Long,

Tacoma, Wash.

My dear Sir:

Mr. McKnight says today you had some talk with him about using my name in the purchase of some

(Deposition of James T. Barber.)

timber lands when it was thought best not to use a company's. He is uncertain whether he or I were to write you on this subject so I do it, and will say that you may do anything short of pledging me in marriage, and I will not kick.

Yours truly,

J. T. BARBER."

Q. I show you letter marked 343 and ask you if that is a letter you received from Mr. Long, May 7, '01? A. Yes, sir.

Q. And was that the next information you had on the subject after the letter you had written which has been put in evidence? A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence.

Tacoma, Washington, May 3, '01.

Mr. J. T. Barber,

Eau Claire, Wis.

Dear Mr. Barber: As I told you when you were out here we are picking up a few tracts of land occasionally and pass title to you. We will probably continue to do this for some time to come down in one section of the country where we are operating. In as much as the revenue laws compelling us to pay taxes on deeds will be repealed in July next, we will refrain from asking you for the quit claim deed for this property until after July 1st, when we will save the revenue. The following is a list of the lands which now stand in your name.

(Description omitted.)

When we are ready to have you execute the quit claim deed, we will send you the original deeds so

(Deposition of James T. Barber.)

you can verify the document which we will send you to execute to us. In the interval thought it well to give you a list of the lands which stand in your name at present time; all of which were purchased for the Warehouser timber company.

Nothing especially new in the situation out here. Trust that your drives come in all right, and that you will not be afflicted by spring affairs as you were last year.

Yours truly,

WAREHOUSER TIMBER COMPANY,

By GEORGE S. LONG,

Agent."

On the back of this letter 343, is an endorsement which is in your handwriting?

A. Yes, sir.

By Mr. BUNDY.—Endorsement reads: "To whom it may concern. The taking of title land bought by W. T. Co. in my name is a matter solely for the accommodation of the W. T. Co., and I have no personal interest whatever in the lands mentioned in this letter. Should anything happen to me the title to these lands should be transferred as directed by the W. T. Co. without consideration.

J. T. BARBER.

Dated May 7-01."

Q. I show you copy of letter on page 285; of company's copy-book, and ask you if that is a copy of the letter you wrote and mailed Mr. Long?

A. Yes, sir.

By Mr. BUNDY.—It is a letter dated, I can't tell when.

(Deposition of James T. Barber.)

A. November 13; it is either the 10th or the 13th.
(By Mr. BUNDY.)

“Mr. George S. Long,

Care of Warehouser Timber Company,
Tacoma, Wash.

Exegencies has arisen which make it desirable to pass the title to certain lands in Idaho through some party entirely removed from association with Barber Lumber Company. These circumstances being similar to those which made it desirable to use my name in connection with some of the W. T. property, I therefor take the responsibility of directing the placing of the title to certain lands in you. As soon as the matter reaches a final adjustment, we will forward a quit claim deed to the property. Trusting that you have no serious objection to this, and thanking you in advance, I remain with kindest regards,

Yours very truly,

JAMES T. BARBER.”

Q. What were the exigencies referred to in that letter, Mr. Barber?

A. The belief that the knowledge of the operation of the Barber Lumber Company in the purchase of these titles would unreasonably enhance the value, the same as explained to Mr. Long.

Q. In dealing with entrymen? A. Yes.

Q. Now, prior to that time, the correspondence shown Mr. Barber, that you had been solicitous and desirous to having deeds from the entrymen to Palmer and Rand placed on record, but no deeds

(Deposition of James T. Barber.)

from them to the Barber Lumber Company have been placed on record; now, what was the difference and distinction as to it affecting the timber business by having one set of deeds on record and not the other?

A. I did so to get the title to the property in the hands of these people we suggested, making the title absolutely secure and keeping from the public the knowledge that these large pieces of property were being secured for the benefit of the company.

Q. The company at that time had not filed its articles to authorize it to do business in the State of Idaho?

A. I am not clear on that; the records will show.

Q. I show you letter taken from the files of the company, 345; is that a letter you received from Mr. Long on November 21-03?

A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence.

“James T. Barber,

Eau Claire, Wis.

Dear Sir: Yours of the 13th inst. at hand, and it will be entirely agreeable to the writer to comply with your wishes in the matter of temporarily being custodian of some of your real estate in Idaho. We recently had a visit from Messrs. Carson and McCarty of your company who were out with Mr. Warehouser. We had a whole lot of wet weather to show them, and other things but the wet weather predominated. With kind regards, I am,

Yours truly,

GEORGE S. LONG.”

(Deposition of James T. Barber.)

Q. I show you telegram taken from the files of the company, marked 346; I ask you if that telegram was received by you March 21-07?

A. Received at our office that date; I think I saw it.

By Mr. BUNDY.—I offer that in evidence.

“Tacoma, Wash., March 20-21-07.

F. H. L. Cotten,

Eau Claire, Wis.

Say to president your company I am subpoenaed to appear before grand jury Boise Saturday next, regard matter mentioned his letter to me November 13, 03. Wire suggestions.

GEO. S. LONG.”

Q. What did you understand by that telegram, Mr. Barber, that I just showed you?

A. What do you mean?

Q. What did you understand Mr. Long meant by “Wire suggestions”?

A. I don’t know what he meant. I could not suggest to him what he had to testify to.

Q. You wired relative to statement in letter?

A. Yes, sir.

Q. I show you telegram copied page 979, Barber Lumber Company book, and ask you if you sent that? A. I did.

By Mr. BUNDY.—We offer that.

“Eau Claire, March 21-07.

George S. Long,

Tacoma, Wash.

Reason of request 3 years was to direct attention

(Deposition of James T. Barber.)

of other timber buyers from our attempt to assemble enough timber in that section for a plant."

Q. Should that telegram have read timber sellers?

A. Yes, sir.

Q. The purpose was to direct the attention of those selling timber rather than those buying?

A. Yes.

Q. And the placing on record of deeds from the entrymen to those third parties would tend to prevent other investors going in there? A. Yes.

Q. And the placing of these deeds from those people a large lumber corporation would enhance the value of lands in hands of entrymen? A. Yes.

Q. Was any of these proceedings or any of these deeds taken in the name of Mr. Rand, Mr. Long, or Mr. Palmer for any other reason or motive than that you have testified to, Mr. Barber? A. No, sir.

Q. I will ask you whether or not Governor Steunenberg by virtue of his contract, who was buying land for you, with you this opinion to the effect of not letting it be known that your folks were interested?

A. I think he did; that is my recollection.

Q. Now, preceding the purchase of 6-4 lands; we diverted a little there because I thought that was the place to do it. I show you copy of a letter, page 297 of Company's book; is that a letter written and mailed by your cashier to Mr. Steunenberg?

A. Yes, sir.

Q. That is his signature?

A. Yes, that is his signature.

(Deposition of James T. Barber.)

By Mr. BUNDY.—We offer that in evidence.

“December 10, 03.

We have today mailed our Chicago check number 39629 for \$10,000.00 to the First National Bank of your city for your credit. We enclose carbon copy of our letter to the Bank which will explain itself. Both Mr. Barber and Mr. Moon are in Chicago and will not return until the last of the week. Mr. L. G. Chapman will write you from Stanley regarding this matter today.

Yours truly,

BARBER LUMBER COMPANY,

Per COTTEN.”

Q. That check was sent from here on December 10-03. Can you state for what purpose that money was sent out, Mr. Barber?

A. To purchase 6-4 claims, I think.

Q. I show you letter marked 371, found in the files of the company, and ask you if that is a letter you received from Mr. Chapman?

A. Yes, sir.

Q. Is that notation at the bottom in your handwriting? A. Yes, sir.

By Mr. BUNDY.—I offer this in evidence.

“Jan. 29, '04.

J. T. Barber, Pres.”

This letter is written from Stanley, Wisconsin, Jan. 29, '04.

“J. T. Barber, Pres.

Eau Claire, Wis.

Dear Sir: I enclose herewith a letter received this

(Deposition of James T. Barber.)

morning from Governor Steunenberg, asking that sixty six hundred dollars be sent Mr. Borah for the purpose of locating claims in 6-4 now offered. I wrote the Governor on the 22nd asking him to send Hosely sixteen hundred dollars for the purpose of taking two claims on Crooked river that had been entered by the two boys who went out with Hosely, supposed that the Governor had funds for this purpose. Of course, in the absence of his statement showing what claims have been taken, it is impossible to know just what funds the Governor has available for the two claims that the Hosely boys have taken. We want, and no doubt we want these now being offered in 6-4 so I think the money had better be sent to Borah for this purpose. If this remittance is made to Mr. Borah, Hosely should be advised from there or here of the fact that he will take care of the claims offered.

Yours truly,

L. G. CHAPMAN."

Notation at bottom: "Send \$6600.00 to W. E. Borah for account and debit Steunenberg.

J. T. BARBER.

Paid Eau Claire, Wis. Jan. 30-04.

By C., Cashier."

Q. Do you recall why the money was sent to Mr. Borah at that time instead of to Governor Steunenberg direct?

A. My recollection is that Governor Steunenberg was away, out of the city, and it was left in Mr. Borah's hands to tend to.

(Deposition of James T. Barber.)

By Mr. BUNDY.—I offer the entry in ledger account of Frank Steunenberg of date Jan. 30-04. Sixty-six hundred dollars, with reference to cash-book on page 11, and I offer entry found at that place. “Frank Steunenberg debit send W. E. Borah, Boise Chicago draft for deposit. Credit your account sixty-six hundred dollars.”

I offer in evidence ledger account of Frank Steunenberg, page 3, of the Barber Lumber Company and particularly item dated March 15-04. Debtor to cash \$10,000.00, and the reference to the cash-book at page 11 and then offer the entry on page 11 which reads: “Frank Steunenberg debtor Feb. 22-04 Chicago check W. E. Borah, Boise, for deposit, your account \$10,000.00.”

Q. I now show you a copy of letter found at page 332 of copy-book of the company and ask you if that is a letter or telegram you sent Mr. Borah on that date? A. Yes, sir; telegram.

By Mr. BUNDY.—We offer that in evidence.

“Feb. 22-04.

W. E. Borah,
Boise, Idaho.

We want all accessible claims on Grimes Creek at twelve hundred or less. Are sending you ten thousand.

JAMES T. BARBER.”

Q. Grimes Creek land refers to 6-4 land, does it not? A. Yes, sir.

Q. Was that the \$6,600.00 sent to Senator Borah on Jan. 30-04, and the \$10,000.00 sent in Feb. 22-04,

(Deposition of James T. Barber.)

and were sent for the purpose of buying claims in the 6-4 property, were they not? A. Yes, sir.

By Mr. BUNDY.—I offer ledger entry in the Steunenberg account dated December 31-03.

“Debtor to cash \$22,600.00.” Referring to page 9 of the cash-book I now offer entry of the cash-book, page 9, as follows:

“December 31-03 Frank Steunenberg debtor. December 10 deposited to your credit with First National Bank, Boise, \$10,000.00; Dec. 24 deposited to your credit with First National Bank, Boise, \$12,600.00.” That makes \$22,600.00; \$6,600.00 and \$10,000.00 sent or deposited to the credit of Governor Steunenberg between Dec. 10-03 and Feb. 22-04, or a total of \$39,200.00? A. Yes.

Q. The greater portion of that was sent for the purpose of buying the 6-4 claims, was it not, Mr. Barber? A. Yes, sir.

Q. The money deposited to the credit of Governor Steunenberg was not deposited as I understand for use in any particular locality, but to the end that he would have money on hand to purchase lands that were available and offered for sale?

A. And which we authorized him to buy.

Q. Could you tell how much of that \$39,200.00 was used for the purchase of 6-4 claims from any knowledge that you have?

A. I couldn't tell.

Recess taken to 1:30 P. M. this day.

1:30 P. M. this day examination of J. T. Barber resumed.

(Deposition of James T. Barber.)

By Mr. BUNDY.—I want to call your attention to the item, Mr. Barber, charged on the books against Steunenberg, December 10-03, and referred to in Mr. Cotten's letter of that date which has been referred to as number 293, and ask you if you know for what specific purpose that was sent out there?

A. I think I stated in regard to that letter. It was sent out to buy claims in 6-4; I don't know that it was sent for that purpose.

Q. The only thing that would indicate it is the date? A. That is all.

Q. Mr. Barber, I show you copy of letter found at page 227 of the company's letter-book; is that a copy of letter you mailed to Governor Steunenberg?

A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence.

“Sept. 4, 03.

Hon. Frank Steunenberg,
Boise, Idaho.

Dear Sir: We have arranged with the Northern Pacific Railway Company for securing a certain lot of scrip available on unsurveyed government land and think it advisable to locate a bunch of this on north fork of the Boise in range 9 east. You may also think it advisable to include a little of the land in town 8 range 8 east on Crooked river above the lands already secured by us. Will you please have Mr. Downs and a competent surveyor ready to take the representative of the northern Pacific railway upon these lands at once upon his arrival in Boise? He will have a letter of introduction to you. It is

(Deposition of James T. Barber.)

necessary for the Northern Pacific to enter those lands in their own name and they in turn will deed it to us. I don't think it would be well to pay the price we have to in order to secure this land, unless you can locate at least 12,500 feet to the acre and in a reasonably accessible location. Please be prepared to take prompt action on the arrival of the Northern Pacific Railway Company's representative in accordance with a telegram I will send you as soon as I am informed of the day of his departure.

Yours very truly,

JAMES T. BARBER."

Q. That letter refers to certain scrip bought from Mr. Phipps? A. Yes, sir.

Q. And which was ultimately located in some unsurveyed towns in the Crooked river country?

A. Yes, sir, north fork.

Q. And refers to lands which were located by scrip in town 8-7 east, town 8-8 east, and town 6-9 east in town 7-9 east; is it not? A. Yes, sir.

Q. I show you telegram on page 225 of the copy-book of the company; did you send that telegram on that day? A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence.

"Eau Claire, Wis. Sept. 4-03.

Hon. Frank Steunenberg,

Boise, Idaho.

Arrange to have Downs and a competent surveyer where you can get them at a days notice. See letter.

JAMES T. BARBER,"

Q. I show you copy of a letter found at page 226

(Deposition of James T. Barber.)

of the company's book; is that a copy of a letter you wrote to Mr. Steunenberg same day?

A. Yes, sir.

Q. We offer it in evidence?

“Eau Claire, Sept. 4-03.

Hon. Frank Steunenberg,
Boise, Idaho.

Dear Sir: In accordance with letter and telegram of this date the bearer is sent out for the purpose of locating some unsurveyed land and you will arrange to have him taken upon the land along the north fork of the Boise River east of range 8.

Yours very truly,

JAMES T. BARBER, Pres.”

Q. To whom was that letter introducing Governor Steunenberg?

A. He was that Northern Pacific Agent that went out there, Mr. Hughes.

Q. At that time had your company or you or Mr. Moon personally located any unsurveyed land at all on Crooked River country? A. No, sir.

Q. I show you copy of letter found at page 263 of the company's book; did you mail that letter at that date? A. Yes, sir.

By Mr. BUNDY.—That is offered in evidence.

“Eau Claire, Oct. 1-03.

Mr. A. E. McCartany,
St. Paul, Minn.

Dear Sir: Answering your letter of the 28th would say that we were under the impression that all of the negotiations with Mr. Phipps were off, but recent

(Deposition of James T. Barber.)

communications from Boise have convinced us that it might be possibly to use some of the scrip about which we have been negotiating with Mr. Phipps. We now have a corps of engineers making a careful survey of some of the timber land upon which some of this scrip can be used, and expect to offer in a few days.

It would be well therefor to have Mr. Phipps ready to send a man to Boise within the next week or ten days. You haveing done all of the negotiations with Mr. Phipps, we desire to have the matter negotiated through you.

Yours very truly,

J. T. BARBER."

Q. Up to that time, Oct 1st, 03, you had not closed for the purchase of any scrip with Mr. Phipps, had you Mr. Barber?

A. No, sir, not unsurveyed scrip; we bought some other scrip previous to that for other purposes.

Q. You had not bought any scrip which was used for the lands in the Crooked river country which is shown in the book? A. No, sir.

Q. I show you copy of letter found at page 267 of the company's book and ask you if you wrote that letter? A. Yes, sir.

By Mr. BUNDY.—It reads:

"Eau Claire, Oct. 8-03.

Mr. L. G. Chapman,
Idan-ha Hotel,
Boise.

Dear Sir: On receipt of your telegram yesterday

(Deposition of James T. Barber.)

morning to the effect that you were prepared to locate 26 hundred acres of unsurveyed government land, I wired Mr. McCartany who has handled this deal for us with the Northern Pacific Railroad, and am in receipt of a letter from him this morning to the effect that Mr. J. N. Hughes left St. Paul last night for Boise where he will arrive 5:15 Saturday afternoon, and I wire you to this effect.

Mr. Hughes takes an old letter of introduction to Mr. Steunenberg written to me before you went to Boise which will answer all purposes and put him in communication with you and the governor. Mr. Hughes hopes to be able to close the whole matter up on Monday morning in a few minutes at the land office. Accordingly, give him every facility possible.

Yours truly,

J. T. BARBER."

Q. Does this refresh your recollection Mr. Barber, of having written a letter of introduction prior to that time when you thought you were going to buy some scrip and the negotiations terminated and were taken up at later time?

A. I can't remember that transaction at all.

Q. September 4, you wrote a letter of introduction to Governor Steunenberg to introduce a man with the Northern Pacific Company; now he didn't go out at that time; you don't recall the circumstances?

A. Very hastily; I don't remember Mr. Bundy.

Q. Well, the correspondence will fix it?

Q. Up to that time Oct. 8-03, there had been no

(Deposition of James T. Barber.)

unsurveyed lands located by scrip by your company, had there? A. No, sir.

Q. I show you letter taken from the files of the company marked 363 1/4 is that a letter you received Oct. 17, 03 from Mr. Chapman? A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence and reads:

“Boise Oct. 13-03.

James T. Barber,

Eau Claire, Wis.

Dear Sir: Enclosed are three plats showing lands upon which we have filed with the Northern Pacific scrip a total of 2640 acres. Mr. Hughes has not been able to get his filings accepted but expects to in the morning. I would like to have what estimates you have in your hands on lands on Moore's and Grimes Creeks. Can bring them back when I come if you want them there.

I think Steunenberg wrote Jack or some of them recently, he wants to lay what scrip he intends using in the Basin right away, and I would like to have it done before I leave.

Yours truly,

L. G. CHAPMAN.”

Q. I show you a letter taken from the files of the company 363 1/2; is that a letter you received from Mr. Chapman on or about its date?

A. Yes, sir.

Q. Does that letter refer to this same scrip which was procured from Mr. Phipps of the Northern Pacific Road and located on unsurveyed lands in the

(Deposition of James T. Barber.)

Crooked River country as noted in plat book?

A. Yes, sir.

By Mr. BUNDY.—It reads.

“Boise, Idaho, Oct. 14-03.

James T. Barber,

Eau Claire, Wis.

Dear Sir: The land office has rejected filings made yesterday by Mr. Hughes on the ground of the papers being incomplete. It seems that this land office has never had any experience with Railroad filings and the rejection is made to protect themselves against possible errors. Mr. Hughes has no doubt of the final acceptance of the lists and thinks it will only mean a little delay. He left for St. Paul this afternoon where an appeal will be made at once. Have made drafts to day for \$1000.00 to pay expenses of surveying party that we had in making these locations and arranged for Hosely's expense after I leave.

Yours very truly,

L. G. CHAPMAN.”

Q. I show you letter taken from the files of the company marked number 282 and ask you if that is a letter you received from Governor Steunenberg on November 2-03? A. Yes, sir.

Q. And attached to it appears to be an opinion by Mr. Garrett, receiver, does it not?

A. Yes, sir.

Q. That opinion refers to the rejection of Northern Pacific scrip to which the recent letters have referred? A. Yes, sir.

(Deposition of James T. Barber.)

By Mr. BUNDY.—We offer 282, which reads as follows:

Boise, Oct. 26-03.

James T. Barber,

Dear Sir: I am informed that the officers of the local land office have within the last day or two sent their conclusion rejecting Northern Pacific application for unsurveyed lands to St. Paul. Mr. John Blake, attorney for Mr. Borah will try to secure a copy of the decisions to-morrow and will forward same to you as Mr. Chapman and myself start on a trip to the Grimes Creek timber district tomorrow morning.”

Q. Were these opinions or letters copies of opinions sent by Mr. Garrett to you in due course as promised in that letter? A. Yes, sir.

Q. I show you letter Mr. Barber, taken from the files of the company did you receive that on Nov. 18, 03? A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence.

“St. Paul, November 17-03.

Mr. James T. Barber,

Eau Claire, Wisconsin.

Dear Sir: Enclosed please find letter from Mr. Phipps with bill from Mr. Borah for your consideration. The scrip has now been laid and accepted by the land officers as of the 5th day of November. Whether any claims have come in between the 13th of Oct. and the 5th of November, nobody seems to know, although Mr. Borah writes Mr. Phipps that

(Deposition of James T. Barber.)

he didn't think there were any. We shall have to take our chances on that.

A. E. McCARTANY."

Q. Now, Mr. Barber, Mr. McCartany was going out that time as attorney for the Barber Lumber Company?

A. Yes, sir.

Q. And had charged of purchasing scrip from the Northern Pacific people?

A. Yes, sir.

Q. And had sole charge of it?

A. Yes, sir.

Q. And is the scrip referred to in that letter the scrip which is spoken of here as scrip laid on unsurveyed land in the Crooked river country in the 4 towns shown on the plat book?

A. Yes, sir.

Q. Mr. Barber, was there any way by which the location could have been designated by political subdivision prior to the times when the lands were surveyed by your corps of engineers?

A. No possible way that we could have located the lands until our surveyors had reported.

Q. And that was subsequent to the 15th of September 03?

A. Yes, sir.

Q. Mr. Barber, who made the selections of land upon which the scrip was placed in the unsurveyed territory near Crooked River?

A. I can't tell you, there was a corps of engineers engaged by Steunenberg or Chapman to make the survey.

Q. They made survey, but Mr. Hosely says that he was the man that selected the pieces?

A. That may be true.

Q. Do you recollect the time Mr. Hosely went out

(Deposition of James T. Barber.)

there to take charge of your logging in September 03? A. Yes.

Q. Where these selections made and the land selected after his departure from Eau Claire?

A. Yes, sir.

Q. At the time Mr. Hosely left here had you not sent this scrip or the papers containing scrip?

A. No, sir.

Q. Had any selection been made in that territory when he left here? A. Not of unsurveyed land.

Q. Did you have any means of knowing what lands he would select out there at the time he left?

A. No, sir.

Q. In this letter from Mr. McCartany is reference to a bill of Senator Borah; have you any recollection of that?

A. Mr. Borah's services were engaged in connection with the rejection of this first entry attempted to be made by Mr. Hughes; by whom I cannot state at the present time.

Q. Did a controversy arise between Phipps and the Barber Lumber Company as to who should pay this bill of Borah's?

A. I know that the matter was under discussion for some time and finally adjusted. I can't tell you now who paid it.

Q. Senator Borah was at that time retained by the year by the Barber Lumber Company?

A. I think he was retained on or after that time, possibly as soon than it, I don't remember the date we retained him; I think he was retained at that time;

(Deposition of James T. Barber.)

yes, sir, he was retained at that time because I think part of the controversy was based upon the fact that he was our regular attorney.

Q. I show you copy of a letter found on page 62, telegram I guess page 62 of the Company's book; is that a telegram you sent? A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence, for the purpose of fixing Senator Borah's connection with the Barber Lumber Company.

“Eau Claire, Jan. 22, 03.

Hon. Frank Steunenberg,
Boise, Idaho.

Retained Borah Checkmate every move of our adversaries for franchises.

J. T. BARBER.”

Q. Prior to that time Mr. Barber, had Mr. Borah been retained as attorney for the Barber Lumber Company or by you or Mr. Moon?

A. No, sir.

Q. At that time it was reported, efforts on the part of Scofield and others to secure exclusive charters for driving and floating saw logs down the river using improvements provided for them for the purpose and Senator Borah was there; and he was retained by the year for two or three years, was he not?

A. Yes, sir.

Q. Now, Mr. Barber, it seems that at or about September, 03, Mr. Chapman went out there to take charge, but didn't stay very long; he was called back, do you remember when he went out there again?

A. I can't fix the dates, it was some time the fol-

(Deposition of James T. Barber.)

lowing year I think.

Q. After Mr. Chapman went back the second time to stay, the affairs were taken out of the hands of Governor Steunenberg at that time practically?

A. Yes, sir.

Q. And Mr. Chapman was the representative of the company? A. Yes, sir.

Q. Now, Mr. Barber, I want to take up the question of your accounting with Governor Steunenberg asking you a few questions about it and before introducing some letters it seems that you sent Governor Steunenberg and deposited to his credit something like \$248,000.00? Did he make monthly or periodical statements to you from time to time what he was doing with this money? A. No, sir.

Q. State in what manner he accounted to you for the money he did spend from time to time or what he sent you as evidence as having expended it?

A. The deeds to the property he had procured were about all that we could get out of him.

Q. Did he send with these deeds itemized statements showing how much he paid for each?

A. No, sir.

Q. And what money he spent outside of deeds then, was any statement rendered to you or any periodical statement rendered to you?

A. No, sir.

Q. State whether or not from time to time you tried to get such statement.

A. We did very frequently but were unsuccessful.

Q. Beginning at or about the time that Mr. Chap-

(Deposition of James T. Barber.)

man went out there the first time—

A. I don't remember when we commenced, but we were continually after him to render itemized statements.

Q. I show you a letter taken from the files of the company marked 112 and ask you if that is a letter you received from Mr. Palmer on August 20-02?

A. Yes, sir.

By Mr. BUNDY.—We offer this portion of the letter.

“Spokane, Wash., August 15, 02.

J. T. Barber,

Eau Claire, Wis.

Dear Mr. Barber:

Scrip.

Am keeping in touch with parties re scrip. At present I know of none at \$5.25 or \$5.30. Mr. Phipps should be able to get you some as cheap as any one if he don't want a rake off.

STEUNENBERG.

Mr. Camel says Steunenbergs will complete his contract, guarantees he is perfectly honest, and claims Steunenbergs thinks I am suspicious of him and for that reason has it in for me.

Steunenbergs phoned me today he has seventy deeds and I send him \$5,000.00. He is to mail me tomorrow care of the Northwestern Lumber Company, complete statement of expenditures. You will *please the letter.*”

Q. Did any such statement come to the Northwestern Lumber Company as promised there?

(Deposition of James T. Barber.)

A. No, sir.

Q. I show you another letter taken from the files of the company 113; did you receive that letter from Mr. Palmer on or about its date?

By Mr. BUNDY.—We offer part of that letter.

“Montreal, August 23-02.

J. T. Barber,

Eau Claire.

Dear Mr. Barber:

P. S. Have Steunenberg send us statement of expenditure within the next few days. Please send me copy.

A. E. PALMER.”

Q. I show you copy of a letter found at page 99 of the Barber Lumber Company copy-book; is that copy of a letter you wrote Governor Steunenberg at that date? A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence.

“Eau Claire, March 20-03.

Hon. Frank Steunenberg,

Caldwell, Idaho.

Dear Sir: I have your letter of the 16th naming change of amount drawn for, to \$20,000.00 which will be paid upon presentation. I want to urge you to use all dispatch in obtaining title to the timber, not only on the Boise and its forks, but also in the Basin. Kindly have titles send to us here as fast as they are taken and also send a statement of the use to which you have put the money you have drawn as we wrote you recently. We will not rest easily until we absolutely control not less than six hundred

(Deposition of James T. Barber.)

million of timber. We are compelled to leave this important part of the business for the present, and would urge you to put into it all energy possible.

Yours truly,

J. T. BARBER."

Q. I show you a letter taken from the files of the company 209, and which is already in evidence and ask you if that is the partial statement made by Governor Steunenberg made with reference to the Crooked River lands? A. Yes, sir.

Q. Does it embrace anything except his disbursements of the first \$65,000.00 sent him in the Crooked River deal? A. That is all.

By Mr. GORDON.—What is the date of that?

By Mr. BUNDY.—It is dated April 3-03.

Q. I show you copy of a letter found at page 261 the company book. A. Yes, sir.

Q. Is that a copy of a letter you wrote to Mr. Chapman? A. Yes, sir.

By Mr. BUNDY.—We offer this portion of that letter. "We received notice this day from the bank here of the arrival at sight for \$15,000.00 drawn by Steunenberg. We have declined to pay this draft without further information in regard to it and have telegraphed Steunenberg for this information. We cannot understand why he should be drawing on us for money when you have plenty of it there in Boise to meet any expenditures which have previously been authorized or which you may authorize. We trust the matter will be straightened out before you receive this letter."

(Deposition of James T. Barber.)

By Mr. GORDON.—What is the date of that?

By Mr. BUNDY.—September 28-03. No. 357.

Q. I show you a copy of letter found at page 264 of same book; is that a copy of letter you wrote?

A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence.

“Oct. 2, 1903.

Mr. L. G. Chapman.

Dear Sir: We have paid the \$1500.00 draft made by Steunenberg on the statement made by wire from him that the funds in the First National have been exhausted. We must insist upon your passing upon financial matters of this kind when you are there, and we desire to take the financial matters out of Steunenberg's hands as soon as possible. We must also insist upon a detailed statement of what has been done with the money in the bank, and also this \$1500.00. We are still short of a lot of information with reference to the money heretofore sent to Steunenberg, and as we are opening a set of books it is necessary for us to have a statement of everything not covered by the contract, existing between Steunenberg and ourselves.

Yours very truly,

JAMES T. BARBER.”

Examination adjourned to May 13, 1909, at this office, 9:30 o'clock A. M.

May 13, 9:30 o'clock A. M., examination resumed.

[Deposition of P. J. Cosgrove, for the Defendants.]

P. J. COSGROVE, being first duly sworn, on oath testified in answer to the following interrogatories and questions put to him as follows:

(By Mr. BUNDY.)

Q. Mr. Cosgrove, you live at Stanley in this State? A. Yes.

Q. Do you know A. E. Palmer who formerly worked for the Northwestern Lumber Company in its office in this city? A. Yes, sir, I do.

Q. State what, if any, relation he is to you.

A. He is a nephew of mine.

Q. Where does he live at present?

A. Toronto, Canada.

Q. For how long has he lived there Mr. Cosgrove?

A. I don't know exactly, it is 5 or six years.

Q. Where did he live prior to going to Toronto?

A. Spokane, Washington.

Q. And where did he live prior to going to Spokane?

A. I think the last place he claimed as his residence before that was in Eau Claire.

Q. Where did he live before he came to Eau Claire?

A. In Buckingham Province, Canada.

Q. Where was Mr. Palmer married?

A. I think in Montreal.

Q. In Canada? A. Yes, sir.

Q. Has he lived any other place than Canada since he was married? A. Not that I know of.

Q. You have been in correspondence with him

(Deposition of P. J. Cosgrove.)

from time to time? A. Yes.

Q. When did you last see Mr. Palmer?

A. I think towards the last of September last.

Q. 1908? A. Yes, 1908.

Q. Did you know or did you meet at that time, Dr. John Watson? A. I did.

Q. Where was it you met Mr. Palmer in September, 1908? A. At his house in Toronto.

Q. And state if Dr. Watson was present at the time.

A. Not at the time I met him. I went to his house, the doctor's office was a short ways from his house, and after talking with him I went to see the doctor.

Q. Was Dr. Watson attending him at that time?

A. He was.

Q. What was Mr. Palmer's mental condition as it appeared to you in 1908?

A. It looked to me as though his memory was pretty much all gone.

Q. Could he talk intelligently on any subject for any time? A. He could not.

Q. Do you say that his inability to talk was due to liquor? A. No.

Q. Did you see him at any time when indications of liquor were noted on him?

A. I got to his house about 1 o'clock in the afternoon and was there until about 7 or 8 or therabouts.

Q. During that time did Mr. Palmer have any evidences of intoxication or drunkenness?

A. No, sir.

(Deposition of P. J. Cosgrove.)

By Mr. GORDON.—The counsel for the complainant objects to this line of testimony as incompetent, irrelevant and immaterial.

By Mr. BUNDY.—You don't fix very definitely the time when Mr. Palmer moved from Spokane back to Canada? Can you fix it within a year or two?

A. No, not closer than what I said there. I don't know just when, five or six years as near as I could get at it. He was going back and forwards, he went back and forwards a good many times. I don't know just at what time he located permanently there.

Q. After he located he lived permanently in Canada?

A. I think so, but I don't know, but that he was back to Spokane after his marriage I am inclined to think he was.

Q. But his family was in Canada?

A. Yes.

Q. Has his home been in Canada since 1905 at least?

A. Oh, yes.

Q. There has been a suspicion in the minds of the Government that Mr. Palmer is away in Canada because of a certain indictment found against him in April, 1907, about two years ago; was he residing in Canada long before that?

A. Yes.

Q. That is all.

Cross-examination.

(By Mr. GORDON.)

Q. Do you know when Mr. Palmer was married?

A. Well, I don't exactly.

(Deposition of P. J. Cosgrove.)

Q. Approximately then?

A. Well, five or six years.

Q. Did he live in Spokane several years after he married and left his family in Canada?

A. I don't know that he did; I think he was there part of a year from what I have picked up, he was part of a year there.

Q. Do you know where Mr. Palmer was born?

A. I *don*, Buckingham Province, Quebec.

Q. Do you know when he emigrated to the United States?

A. I do.

Q. When?

A. March, 1887.

Q. And he made United States his home until the time you speak of that he returned to Canada?

A. I think so.

Q. Most of the time was in Wisconsin and the State of Washington?

A. Most of the time; yes.

Q. That is all.

By Mr. GORDON.—Counsel for the complainant asks that all testimony of Mr. Cosgrove be stricken out on the ground of its immateriality, irrelevancy and incompetency.

[Deposition of James T. Barber, for the Defendants (Recalled).]

JAMES T. BARBER, recalled, testified as follows, to wit:

By Mr. BUNDY.—I show you a letter taken from the files of the company marked 360 and ask you if that is a letter you received in due course of business

(Deposition of James T. Barber.)

on the 12th day of October, 1903? A. Yes, sir.

By Mr. BUNDY.—We offer that letter in evidence or that part of it which relates to Governor Steunenberg.

“Boise, Idaho, Oct. 8-03.

James T. Barber,

Eau Claire, Wis.

Dear Sir: Steunenberg brought me his statement of receipts and disbursements on account of Basin lands this morning and is now having copy made. I will send it to you as soon as completed, either tomorrow or day following. According to his report he has only about \$350.00 on hand aside from the certified check on First National Bank account mill-site purchase. Land matters are in such shape and my stay so indefinite that I am of the opinion that he will have to attend to handling them for the present and made final account when he has taken up such claims as he now expects to be able to get. He has titles that he can take immediately in the Basin requiring about \$3,000 and on Crooked River requiring about \$10,000 now and will want \$5,000 more about November 30th. He will make draft today for \$13000.00 to take up what there is in sight now.

I have drawn today through the First National here for \$1000.00 which I will use in getting Hosely such equipment as he needs to go into the woods. He will have to have a team, wagon, etc. We are trying to get him away today as there is much for him to do while the weather permits. Will write you more fully about the Steunenberg account when I

(Deposition of James T. Barber.)

send his statement.

Yours truly,

L. G. CHAPMAN."

Q. That letter is dated Oct. 8-03; can you tell from that fact what Mr. Hosely was going to do when you got him fixed up with equipment?

A. I don't think I can tell, only in a general way, that he was fixing himself for an unsurveyed land trip.

Q. I show you copy of letter found at page 280 of the copy-book of the company; is that a copy of a letter you wrote and mailed to Mr. Chapman that date? A. Yes, sir.

By Mr. BUNDY.—We offer it in evidence.

"Eau Claire, Oct. 30-03.

Mr. L. G. Chapman,
Boise, Idaho.

Dear Sir: Mr. Carson has decided that he will not stop in Boise on his trip west. This being the case I think it would be well for you to finish your negotiations with the Governor, secure from Steunenberg financial statement showing the cost to us of the timber purchases made by him. Give Hosely his last final instructions and come east as soon as these matters are arranged.

We will have a meeting in St. Paul soon after you return at which we will consider many of the questions which you will have to present, such as the obtaining of the franchises for driving logs on the river, etc.

Yours truly,

JAMES T. BARBER."

(Deposition of James T. Barber.)

Q. I show you copy of a letter found at page 380 of the copy-book of the company book and ask you if that is a letter written by your cashier and sent by him, Mr. Cotten to Governor Steunenberg?

A. Yes.

By Mr. BUNDY.—We offer that in evidence.

“Eau Claire, June 21-04.

Hon. Frank Steunenberg,

Dear Sir: Your favor of the 12th was received during the writer's absence. Think Mr. Moon has already advised you with reference to the annual meeting. In regard to the statement will say, that what we want is a statement from you commencing with the balance of the account as per your last statement and bringing the account up to date. We have written up on the books all the items from your previous statement, although they are not in just the form that we would like them. Think statement should be made continuous, that is each statement should show the moneys received, moneys paid out and the balance of cash on hand at the date of rendering statement, and each succeeding statement should begin with the amount of cash on hand as shown by the preceding statement. In this way we can tell whether we have made commissions or not as we can prove our account by the balance shown in your statement. We are very much disappointed that the statement is not here as it is quite important that the books be written up without further delay. We trust you will make it out to say June 25th, inclusive, and forward it to us so it will reach us not

(Deposition of James T. Barber.)

later than the 30th. Writer has just returned from an absence of nearly two weeks or your letter would have been given more prompt attention.

Yours very truly,

BARBER LUMBER COMPANY,

Per F. H. L. COTTEN."

Q. I show you copy of a letter found at page 386 of the company copy-book; is that a letter you mailed and wrote Governor Steunenberg on that date? A. Yes, sir.

By Mr. BUNDY.—That is offered in evidence.

"Eau Claire, June 25, 04.

Hon. Frank Steunenberg,

Boise, Idaho.

Dear Sir: I have not been paying much attention to the details of this company's land matters. I find now however, that we have practically nothing in this office to indicate the extensive transactions which have taken place under your directions. All deeds, records and memorandums of whatever nature must be in this office and we would direct you to place upon record, if that has not already been done, all of the deeds to the lands of whatever character running to the Barber Lumber Company at once and forward them to this office promptly. In the meantime all papers bearing on this question, and all deeds already recorded should be sent here without any delay. I also find quite a large undigested account between you and the company for moneys forwarded at various times for investment and for which we must insist upon receiving a full and com-

(Deposition of James T. Barber.)

plete account showing disposal of the same. The business affairs of this company have reached a point where it is necessary that a complete system of records should be established here as this still remains the main office of the company. Kindly attend to this promptly.

Yours very truly,

JAMES T. BARBER,

President.

P. S. Whenever you do business for this company complete statements of all transactions must be made monthly."

Q. I show you copy of a letter found at page 145 of the company book and ask you if that is a copy of a letter sent by and written in the handwriting of S. G. Moon, Secretary? A. Yes, sir.

By Mr. BUNDY.—I think it is Eau Claire, June 8-03,

"Hon. Frank Steunenber,
Caldwell, Idaho.

Dear Sir: Preparatory to our opening our new set of books, we wish you would make us a statement of all money received and expended by you. Please make same as specific as possible, and oblige,

Yours truly,

S. G. MOON,

Secretary."

[Deposition of S. G. Moon, on Behalf of the Defendants (Recalled).]

S. G. MOON, recalled as a witness, testified as follows:

(By Mr. BUNDY.)

Q. I show you two letters which seem to be fastened together, one marked 279 and the other 280. Number 279 dated Oct. 5-03 and number 280 dated July 7-03, both being letters signed by Frank Steunenberg and which contain statements. Taking number 280 up first, are these statements received by you as secretary of the Barber Lumber Company from Governor Steunenberg in which he made statement of his receipts and disbursements in what is known as the Crooked River transaction in 280; in what is known as the Basin transactions in 279?

A. Yes, sir.

Q. I will ask you as to whether or not these statements constituted the only statements made up to the statements shown you, of his receipts and disbursements in these two enterprises, excepting the partial statement of Crooked River receipts and expenditures made on April 3-03, and which is in evidence here as 209?

A. So far as I know, yes, sir.

Q. Statement shown you 279, purports to be a statement of receipts and disbursements in acquiring the items in the Basin, does it not?

A. Yes, sir.

Q. The statement 280, purports to be a statement of receipts and disbursements made in the ac-

(Deposition of S. G. Moon.)

count of purchases of timber lands on Crooked River up to July 7-03; does it not?

A. Yes, sir.

Q. I notice on 279 some computations in pencil, signed "Cotten"; that is in the handwriting of your Cashier, Mr. Cotten, is it not?

A. Yes, sir.

Q. I find on the last page of 280, certain computations in pencil, also signed "Cotten"; these computations are in his handwriting?

A. Yes, sir.

Q. And also the notation in blue pencil is in his handwriting?

A. Yes, sir.

By Mr. BUNDY.—We offer these in evidence and reads as follows:

Boise, Idaho, Oct. 5th, 1903.

S. G. Moon, Sec. Barber Lumber Co.,

Eau Claire, Wisconsin.

Dear Sir: I herewith submit statement of cash received and disbursed in purchasing certain interests of William Sweet, and in acquiring title to lands on Grimes' and Moore's Creeks.

Boise County, Idaho.

Very truly,

FRANK STEUNENBERG,

(Deposition of S. G. Moon.)

Boise, Idaho, Oct. 1st, 1903.

Dr.

Apr. 10, 1902.	Received from A. E. Palmer (check to Wm. Sweet) account Wm. Sweet's investment in timber lands.....	\$21,950.00
" " "	Received from A. E. Palmer (check to Wm. Sweet) account Wm. Sweet's profit.....	\$10,975.00
" " "	Received from A. E. Palmer account titles ...	\$ 5,800.00
Apr. 11, 1902.	Received from A. E. Palmer account "	\$ 1,200.00
Apr. 25, "	" " " " " " "	\$ 825.00
May 2, "	" " " " " " "	\$ 250.00
June 16, "	" " " " " " "	\$ 5,000.00
" 25, "	" " " " " " "	\$ 5,000.00
" 26, "	" " " " " " "	\$ 5,000.00
" 30, "	" " " " " " "	\$ 5,000.00
July 7, "	" " " " " " "	\$ 5,000.00
July 21, "	" " " " " " "	\$10,000.00
Oct. 4, "	" " " " " " "	\$ 5,000.00
Nov. 6, "	" " " " " " "	\$ 3,000.00
Dec. 2, "	" " " " " " "	\$ 6,000.00
Apr. 10, "	Frank Steunenberg's investment.....	\$ 3,750.00
		<u>\$93,750.00</u>
	Less Sweet's profit (as above).....	<u>\$10,975.00</u>
	Bal. available to apply on titles.....	\$82,775.00
Apr. 10, 1902.	To date, paid for 97 titles (full claims) and for Sherman and Jennie Thompson claim (120) acres.....	\$78,200.00
Apr. 10, "	To date, advanced to purchasing agent.....	\$ 3,712.00
Mar. 23, 1903.	Paid Samuel and Emma Swan, acct. mortgage SE. ¼ Sec. 35 Tp. 8 R. 5 E. and SW. ¼ Sec. 25 Tp. 7 R. 5 E.....	\$ 1,393.50
		<u>\$83,306.00</u>
Aug. 15, 1902.	Paid P. H. Downs for cruising and estimating scrip "forties" in 6-5 & 8-5.....	\$ 250.00

Boise, Idaho, July 7, 1903.

S. G. Moon, Sec. Barber Lumber Co.,

Eau Claire, Wis.

Dear Sir: I have the honor to report the following receipts of funds from the Barber Lumber Company and disbursements of the same, account the purchase of timber lands situated on Crooked River,

(Deposition of S. G. Moon.)

Boise County, State of Idaho, also partial purchase of certain lands for a mill site near Boise City, Ada County, Idaho, and incidental features connected therewith, also attorneys fees and items of incidental and personal expense. Owing to the fact that my data and record of operations is somewhat scattered it may be found later that this report is not absolutely complete and correct. There are also some items of expense which I have incurred, viz.: payment of \$200 to Mr. A. B. Campbell of Spokane, Washington, for services rendered in connection with government timber inspector, and my own personal expenses for trip from Idaho to Eau Claire, Wisconsin, Washington, D. C., and return, last December and January (about \$200) further disposition of which I will take up with you or Mr. Barber when I see you personally.

Very respectfully,

FRANK STEUNENBERG.

RECEIPTS.

February	11, 1903	.....	\$20,000.
"	14, "	.....	\$25,000.
"	18, "	.....	\$ 100.
(Excess see disbursements below)			
March	16, 1903	.....	\$20,000.
April	8, "	.....	\$10,000.
May	6, "	.....	\$ 7,500.
Total	.....	.....	\$82,600.

DISBURSEMENTS.

July	7, 1903.	78 Titles at \$950.	\$74,100.
Dec.	5, 1902.	Cash advanced to Taylor account expenses	
		trip to Crooked River	7.00
Dec.	26, "	Telegram Eau Claire-Moscow F. S. to C. B. S.	1.05
"	26, "	Telegram Moscow-Eau Claire, C. B. S. to F. S.	1.05

"	"	"	Telegram Eau Claire-Boise, F. S. to Kinkaid,	1.17
Jan.	20,	1903.	Cash advanced to Taylor account traveling expenses trip to Crooked River	75.00
Jan.	18,	"	Telegram Boise-Eau Claire, F. S. to Barber Lumber Company	\$ 2.05
Jan.	20,	1903.	Maps Boise City and vicinity, mailing tube and express Boise to Eau Claire	2.50
Jan.	21,	"	W. E. Borah before Land Board.....	350.00
Jan.	21,	"	W. E. Pierce & Co., advance payment on options	\$1,100.00
			Payment to Coston	\$500.
		"	" " Drake	100.
		"	" " Bedal	200.
		"	" " McMahon	100.
			Excess returned	100.
				<hr/> 1100.
Jan.	22,	1903.	Board (self) Idanha, Jan 16-22	\$ 15.00
Jan.	24,	"	Forwarding charges on telegram .....	.35
Jan.	30,	"	Board (self) Idanha, Jan. 23-30	11.50
				<hr/> \$75,666.67
Feb.	14,	1903.	Board (self) Idanha, Feb. 2-14	27.50
Feb.	20,	"	Miss Rubin, typewriting	2.00
March	15,	"	Mailing tube and express to Eau Claire.....	.50
March	17,	"	Board (self) Idanha, Feb. 17-21, March 8-14	25.25
April	3,	"	Express deeds to Eau Claire .....	.60
April	8,	"	W. E. Borah, one-half year retainer to July 1, 1903,	600.
April	7,	"	Board (self) Idanha, March 18-20, March 24-25, March 31-April 2, April 4-7	20.75
April	10,	"	C. C. Stevenson, balance survey, etc.	86.50
April	15,	"	W. H. Taylor, balance trip to Crooked River, including work done last October and November	253.82
April	23,	"	Board (self) Idanha, April 16-23	17.50
April	23,	"	Wire to Rawlins, Wyo. ....	.50
April	27,	"	W. E. Pierce & Co. May payment on Coston option	125.00
May	2,	"	Telephone, First National Bank, Boise, to F. S. ....	.25
May	2,	"	Telephone, Taylor to F. S. ....	.25
May	6,	"	Forwarding charges, telegram .....	.75
May	6,	"	Kate and Joseph Perrault, land	7,500.00

May	16,	"	Express deeds to Eau Claire .....	.25
May	16,	"	W. E. Borah, fees for abstracts, recording Perrault deed, filing articles of incorpora- tion, Barber Lumber Company	51.70
June	1,	"	W. E. Pierce & Co., June payment Coston option	125.00
June	2,	"	Miss Fraser, typewriting Wiley report	4.00
				<hr/>
				\$ 8,842.12
				<hr/>
				\$84,508.79
June	9,	"	Board (self) Idanha, April 27-28, May 1, May 8-10, May 12-17, May 26-31, June 2-3,	55.25
June	10,	"	Miss Rubin, Typewriting,	3.00
June	13,	"	Board (self) Idanha	12.50
June	12,	"	Wire to Cheyenne, Wyo., F. S. to Wiley...	.50
June	12,	"	Wire " " " " " ...	.50
June	16,	"	Answer from Wiley "... ..	.50
July	7,	"	———— Buchanan, Taylor helper trip to Crooked River, Oct. 19, 1902,	27.00
				<hr/>
				\$84,608.04

Q. I now show you a statement taken from the files of the Barber Lumber Company 2801½, the first three pages of which are copies of the two statements just put in evidence. Are they not or appear to be? A. Yes, sir.

Q. And the remaining pages commencing with page 4 purports to be a continuation of the report made by Steunenbergh, dated July 7-03, does it not?

A. Yes, sir.

Q. And the *eight* page of which purports to be a continuation of his report of October 5-03, does it not? A. Yes, sir.

Q. And the 9th page does, or purports to state an account of personal expenses incurred from March '02 to Jan. 1st, '03, by Mr. Steunenbergh?

A. Yes, sir.

(Deposition of S. G. Moon.)

Q. Do you know where that statement was made, these continuations of reports were made?

A. I think they were made in our office.

Q. And who if anyone made it?

A. As I recall it Mr. Steunenberg dictated it to a stenographer.

Q. And who if anyone assisted Mr. Steunenberg as to the form of it?

A. When Mr. Steunenberg came there, I think I turned him over to Mr. Cotten and told him to make a statement to Mr. Cotten, and Mr. Cotten indicated, I think, the form in which he wanted the statement rendered. Mr. Cotten will tell about that.

Q. Is that statement shown you 2801½ the last statement ever made to you or to the Barber Lumber Company by Governor Steunenberg of the money sent to him and disbursed by him?

A. So far as I know.

Q. Did you ever see or hear of any statement other than that?

A. No, not that I remember of.

Q. And that statement number 2801½ shows a balance due from Steunenberg as of July 1st, '04, of \$6,763.25, does it not? A. Yes, sir.

Q. Now, you look at Governor Steunenberg's account, ledger account on page 3 of the ledger of the Barber Lumber Company, and I ask you as to whether or not there are any charges subsequent to July 1st, '04, except one of \$1.50 on August 31st, and a charge of \$6,710.50 on December 19th?

A. No, sir.

(Deposition of S. G. Moon.)

Q. Referring to page 14 of the journal can you tell us what that \$1.50 was for?

A. Collection on A. E. Palmer draft of April 25, '02, \$1.00. Error in addition on first page Steunenberg Oct. 5, '03, statement \$.50, referring to page 16 of the journal, can you tell us what is the item of \$6,710.50 which is credited to Steunenberg on December 19th?

A. Yes, sir, that was when the account was transferred to Boise office. Balance of Steunenberg account \$6,710.50.

Q. In my questions relative to that \$1.50 I said he was charged, it should be he is credited with \$1.50, it should be his account was not credited or charged with anything.

Q. When the account was transferred to the Boise office on December 19th all of the accounts of the Barber Lumber Company were there transferred?

A. Yes, sir.

Q. And no charges had been made on any personal account here, except stock subscription account, that is all.

A. I think so, so far as I know.

By Mr. BUNDY.—We offer in evidence this statement 280½.

Beginning with the 4th page reads as follows:

Barber Lumber Co.

In account with,

Frank Steunenbergl.

Continuation of Report of July 7, 1903.

1903.

July	7.	To Balance per statement	2,008.04	
June	24.	By cash, Sent First Nat'l Bank		50,000.00
"	27.	To John McMahon, 2d partial payment on land, millsite	500.00	
"	"	" I. N. Coston, final payment on land, millsite	26,750.00	
"	"	To Isaac Bedal, final payment on land, millsite	2,550.00	
"	29.	To Wm. Drake, final payment on land, millsite	5,100.00	
July	1.	To Miss Rubin, typewriting	3.00	
"	2.	" W. E. Borah, fees and costs in filing suits to quiet titles, McMahon land,	50.00	
"	21.	To Miss Bush, typewriting	1.60	
Aug.	26.	" Idan-ha Hotel, Board (Self) June 13-July 31	54.55	
"	7.	To James Stephenson, maps for B. L. Co., showing Forest Reserves	2.00	
"	14.	To Pat Downs—per diem and expenses, trip to Crooked River and North Fork with G. D. Hoseley	38.00	
"	"	" John I. Wells, expenses, trip to Centerville, account forest fires, ...	21.00	
Sept.	1.	" F. Steunenbergl—Expenses, trip to Basin, account forest fires	30.00	
"	18.	By Cash sent Commercial Bank, Cald- well		1,500.00
"	26.	To Geo. T. Young, Centerville, expense fighting fire	167.00	
Oct.	2.	To Bogart & Mickey, abstracts and maps, acct. McMahon title, quieting case in Probate Court	8.00	

Oct.	9.	By Cash sent Commercial Bank, Caldwell		10,000.00
"	13.	To Stamps, stationery, incidentals,....	25.00	
"	"	" Pat Downs—per diem and expenses trip to Crooked River and North Fork, in connection with laying N. P. scrip on unsurveyed land	36.00	
			37,344.19	61,500.00
Oct.	13.	" Wm. Gulliford, saddle horse for Chapman, account stripping land,	12.50	
"	23.	" John McMahon, 3d partial payment on land, millsite	700.00	
"	"	" John McMahon, final payment on land, certified check in escrow, First Nat'l Bank, Boise	5,000.00	
"	24.	" A. C. Thompson, livery bill, trip to Basin, various trips of surveyor, Chapman, and self, to millsite and Highland dam	43.00	
"	29.	" Idanha Hotel, Board, self, July 29-Sept. 30	88.10	
"	29.	" Trip to Basin with Chapman.....	30.00	
Nov.	16.	" J. H. Meyers, stage fare, trip to Idaho City	7.00	
"	17.	" Trip to Twin Falls with Chapman ..	40.00	
Dec.	1.	" W. E. Borah, bal. salary as atty. for 1903,	600.00	
"	14.	By cash sent 1st Nat'l Bank, Boise		10,000.00
"	14.	To expense in trial cases	100.00	
"	"	" " "	200.00	
"	28.	By cash sent 1st Nat'l Bank, Boise,		12,600.00
"	29.	To L. L. Folsom, Assessor, Ada County, Taxes, Drake	8.50	
		Rand,	13.29	
		Bedal	9.00	
		Coston	91.37	122.16
"	30.	To expense in trial cases	380.00	
"	"	" Geo. F. Redway, Cashier, 1st Nat'l Bank, Boise, Taxes on timber land in Boise County	2,500.00	
"	"	" Geo. F. Redway, Cashier, 1st. Nat'l Bank, Boise, exchange	2.75	
1904.				
Jan.	2.	" Idaho Statesman, subscription for one year	7.00	
			47,176.70	84,100.00

		Forward,	47,176.70	84,100.00
Jan.	2.	To Expense in trial of cases	20.00	
"	"	" John Kinkaid, taxes on timber claims in Boise County, viz.:		
		Kinkaid	14.00	
		Downs	14.00	
		Cassell	14.00	42.00
"	4.	" W. S. Galbraith, Board self at Idaho City and subscription to Boise County News		6.00
"	"	" C. S. Koelsch, per diem and ex- penses, trip to Idaho City, acct. taxes on timber land	25.00	
"	7.	" G. D. Hoseley, Atty.	250.00	
Feb.	3.	By cash sent 1st Nat'l Bank, Boise, through W. E. Borah		6,600.00
"	22.	" Cash sent 1st Nat'l Bank, Boise, through W. E. Borah		10,000.00
Mar.	18.	To Capital News, subscription	5.00	
"	25.	" Miss Yaeger, Typewriting	2.00	
"	28.	" Miss Rubin, "	10.00	
"	"	" W. R. Lake, 1st partial payment on scripminutes and posting.	100.00	
"	"	" Pat Downs, posting notices on scrip locations, 1st posting.....	200.00	
April	1.	" Idan-ha Hotel, Board and lodging self, Oct. 1, 1903,-March 31, 1904...	211.25	
"	"	" L. M. Pritchard, typewriting	4.50	
"	19.	" A. T. Ingalls, surveying McMahon lands	15.50	
"	"	" W. R. Lake, 2d partial payment on scrip minutes and posting	100.00	
"	5.	" Idan-ha Hotel, Board, self, April 1- June 5th,	102.00	
"	"	" Stamps and typewriting	10.00	
"	17.	" Mose Kempner, partial payment on land, Beaver Creek Meadows	25.00	
June	1.	" W. E. Borah, salary as attorney, to July 1, 1904	600.00	
			<hr/>	
			49,004.95	100,700.00

vs. The Barber Lumber Company.

4609

	Forward	49,004.95	100,700.00
July	1. To Disbursements by W. E. Borah between Feby. 22d and July 1st: C. A. Thompson, livery team for Hoseley 2.50 Pan Handle Abstract Co. .. 8.00 Kate Gorman, recorder, Boise County, recording Deeds .. 39.80 John Kinkaid, services .....200.00 J. J. Blake, " 3.50 Tom Calahan, services in McMahon probate matter, 100.00 Jonas Brown, fees in Probate Court 30.00 Kate Gorman, Recorder, Boise Co., recording deeds .....198.00		581.80
"	1. " Seventeen titles on Crooked River and North Fork at .....950.00	17,150.00	
"	" " Five titles on North Fork at 800.00 Note.—The above 22 titles were taken subsequent to report of July 7, 1903.	4,000.00	
"	" " Twenty-five titles in Tps. 6-4 and 5-4 at .....800.00	20,000.00	
"	" " Two titles, same tps., at ..1,100.00	2,200.00	
"	" " One title, same Tps., at ..1,000.00	1,000.00	
	Balance	6,763.25	
		100,700.00	100,700.00

1904.

July	1. By Balance	\$6,763.25
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Barber Lumber Co.

In Account with,

Frank Steunenberg.

Continuation of Report of October 5, 1903.

1903.

Oct.	5. To Balance, as per statement	781.00	
"	9. By Cash sent Commercial Bank, Caldwell		3,000.00
Nov.	1. To one title at \$800.00.....	800.00	

1904.

July	1. To one title, balance on John I. Wells	412.50	
		1,993.50	3,000.00
	Balance,	1,006.50	
		3,000.00	3,000.00

1904.

July	1. By Balance	\$1,006.50
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Barber Lumber Company,

In Account with

Frank Steunenberg.

Personal Expenses.

Personal Expenses incurred March, 1902, to January 1, 1903.

1902.

July 1.	To Geor. M. Parsons, Atty. before Land Office.....	400.00
Sept. 29.	To Mrs. Gillespie, room rent during July, August and September.....	24.50
" "	To Mrs. H. C. Branstetter, board during July, August and September.....	22.00
Nov. 12.	To Trip to Tacoma, Senator Foster.....	50.00
Dec. 2.	" Bank of Commerce, Boise, Exchange on checks of A. E. Palmer, April 10, 1902, to date..	40.00
" 13.	To Idan-ha Hotel, Board during March, April, May, June, July, August, September and December.....	122.75

1903.

Jan. 1.	To Trip to Spokane, Eau Claire, Wis., Washington, D. C.....	200.00
" "	To A. B. Campbell, Spokane, Services account special agent.....	200.00

 1059.25

(Deposition of S. G. Moon.)

Q. I show you copy of letter found at page 278 of the copy-book of the company and ask you, Mr. Moon, if that is a copy of a letter you wrote and mailed Mr. Chapman on date shown?

A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence.

“Eau Claire, Feb. 4-04.

L. G. Chapman,
Boise, Idaho.

Dear Lawrence: I have your of the 17th inst. inclosing list of deeds held by Steunenberg and note what you say with reference to said lands, etc. Don't forget to have Steunenberg send statement of last years Basin operations before you leave Boise.

Yours truly,

S. G. MOON.”

Q. I show you copy of a letter found on page 323 of the copy-book of the company; another copy of letter you wrote and mailed to Mr. Chapman on that date?

A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence. It reads:

“Eau Claire, Feb. 4-04.

Mr. L. G. Chapman,
Stanley, Wis.

Dear Lonz: We have not yet received our report of expenditures from Steuneneberg. We think you had better write him that we must have this right away. Have him make it in such shape that together with his old statement, we can tell just what money he has received from us, what he has spent

(Deposition of S. G. Moon.)

and what balance he has on hand, and think he should hereafter render a monthly statement the first of each month.

Yours truly,

S. G. MOON."

That letter was written, Mr. Chapman, after his return from Boise, the first time, was it not?

A. Yes, sir.

Q. I show you copy of letter found at page 342 of the copy-book of the company and ask you if that is a copy of a letter you wrote and mailed Governor Steunenberg on the date shown? A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence.

"Eau Claire, March 21-04.

Hon. Frank Steunenberg,

Caldwell, Idaho.

Dear Sir: We have advices from Washington to day that the committee on public lands has practically agreed on the Mondell bill in a form which it seems to me will, if it passes, knock out any scrip which we have on hand when the bill is passed. We should use every effort to get all of our scrip laid on lands carrying eight thousand feet or more to the acre of timber.

Personally we have not been able to see any good reason why this scrip was not laid long ago. I do not understand that it will be very difficult now to find the lands on which it can be laid, but it would have been easy a year or so ago. We feel now that every effort must be made to lay the rest of the scrip before the Mondell bill becomes a law, even if we

(Deposition of S. G. Moon.)

have to go into the Moore's Creek Basin for a part of it.

We trust you will complete your financial report up to date with as little delay as possible as we have not yet opened our books and we cannot well do so until we have your report. We think it would be best hereafter if you would make a monthly report showing money on hand at the beginning of the month and the moneys paid out during the month. We see no reason for delay in putting on record of all of the deeds which we sent you for that purpose some months ago.

We trust you will tend to having this done as fast as practicable.

Yours truly,

S. G. MOON,

Secretary."

Q. Mr. Moon, what did you refer to in that letter by saying that you could see no good reason why scrip had not been laid long ago?

A. Well, I could— It had been our original intentions to scrip lands in the Basin. We had bought scrip for that purpose and sent it to Governor Steunenberg, and he held it there for the purpose of placing it on lands covered by his contract, and he hadn't done it; that is all the explanation I can give.

Q. Was that true with reference to 6-4, in Crooked River? A. Yes, sir.

Q. I will ask you, Mr. Moon, as to whether during your entire connection with Governor Steunenberg you were urging the placing of scrip and he was

(Deposition of S. G. Moon.)

making excuses for not doing so? A. Yes, sir.

Q. That was true from the beginning to the end, was it not? A. Yes, sir.

Q. I show you copy of letter found at page 373 of the copy-book of the company and ask you if that is a copy of a letter written by your company by Mr. Cotten, cashier? A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence.

“Eau Claire, May 28-04.

Frank Steunenber,

Caldwell, Idaho.

Dear Sir: The writer has been instructed to open the books for the Barber Lumber Company and in looking over the papers, I find that we have not a statement from you covering your financial transaction to date. We desire to open the books and have everything complete and up to date, and Mr. Moon requests me to ask you for a statement covering your dealings up to June 1st, 04. In sending statement kindly show all expenditure and give sufficient information with each item to enable us to determine what account should be charged, etc. Also show balance of cash on hand, in bank and elsewhere, so we can verify our account with you. Kindly give this your immediate attention, as it is absolutely necessary that we have a statement at once.

Yours very truly,

BARBER LUMBER COMPANY,

By F. H. L. COTTEN.”

Q. I show you a letter from the files of the company, number 323; is that a copy of a letter you re-

(Deposition of S. G. Moon.)

ceived from Governor Steunenberg on or about that date? A. Yes, sir.

Q. We offer that letter in evidence, the part referring to financial statement, reads as follows:

“Boise, Idaho, June 6-04.

S. G. Moon, Secretary,
Eau Claire, Wis.

Dear Sir: Since my return home from Washington I have been unable to complete my report of financial operations at different times. Since my return when I did have the opportunity I have felt so indisposed on account of a continued nervous neuralgia attack, that I could make no headway. Am feeling much better since warm weather has set in, that I have no fear of being able to close up rapidly. Within the last day or two, I collected the deeds taken by Mr. Borah, Mr. Kinkaid and others during my absence and report the following number of titles on hand; Boise Basin 12 titles, including the mortgage of Sam and Minnie Swan for 320 acres; Crooked River, 100 titles; township 6 north, 4 east, 25 titles; scrip, 4,160 acres; this does not include the Northern Pacific acreage. We still have on hand 1,840 acres of Forest Reserve scrip and will lay it as soon as possible on the very best land obtainable, unless otherwise directed. Mr. Hosely reported against the tract on Rattle Snake (unsurveyed*). I directed Hosely a few days ago to proceed to Rabbit Creek and investigate the timber there and also report on the driving possibilities of the Creek. There are a number of claims in that section that are on the

(Deposition of S. G. Moon.)

market here. Hosely made a trip in there on the snow last December. His impressions were favorable. Expect him out soon.

Very truly,

FRANK STEUNENBERG.

P. S. There are a few more claims in 7-5 and 6-4, etc. About 7 in all that I will take in a few days."

Q. I show you a letter taken from the files of the company, marked 337. Stamped with a stamp indicating it was received July 5-04, being a letter addressed to James T. Barber; is that a letter received by your company and on file in the papers from Steunenberg and addressed to the President of the Barber Lumber Company? A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence. It reads:

"Boise, July 1st. -04.

James T. Barber, President.

Barber Lumber Company,
Eau Claire, Wis.

Dear Sir: I have your of June 25, relative to deeds, records, papers, etc., and financial report. Regarding deeds, etc., will say that all deeds except five have been recorded. List sent Mr. Moon yesterday, and that about 120 patents will be recorded by the time you receive this letter. I notified Mr. Moon or Mr. Cotten some days ago that I expected to be in Eau Claire at the time of the postponed Annual Meeting, and that I would bring my report with me. It was not until a few days ago that I received word that the Annual Meeting was not postponed. I feel that

(Deposition of S. G. Moon.)

certain portions of my report and the situation here, as well as my own relations with the company would be better served by personal statement. With this in view I expect to start for Eau Claire not later than next Wednesday. Would start at once but have to attend court as a witness early next week.

FRANK STEUNENBERG."

By Mr. BUNDY.—There is a little in this letter about state lands.

Q. Can you fix time approximately when Governor Steunenberg arrived here with the date from which he made his last report to you which were continuations of the last two reports received?

A. It was some time in July, 1904.

Q. Now, did you personally go over, with Governor Steunenberg, the various items of credit which he was claiming against your company?

A. No, sir.

Q. Who audited the account which he rendered at that time?

A. I don't know as it was exactly audited. He came to make his report and we turned him over to Mr. Cotten and told him to make his report to Mr. Cotten, and with Mr. Cotten's assistance with reference to the form, got up a report which he left with us and which we put on the books as he rendered it.

Q. On the last 5 pages of this statement 280½, I find after each item lead pencil notations indicating to what amount such item should be charged; in whose handwriting are these notations, if you know?

(Deposition of S. G. Moon.)

A. Mr. Cotten's.

Q. That is true with all the items on that statement, is it not?

A. Yes, sir; I will say here that it was always our intention to have a final report from Mr. Steunenberg which we expected to get out more carefully, as these reports from time to time were not considered final, and didn't receive from me or Mr. Barber the attention which they should have received and would have received had they been final reports.

Q. They were in the nature of claims made against you for which credit was given him?

A. Yes, sir.

Q. Mr. Moon, did I ask you anything about certain claims filed by Arthur Anderson, Nugent, Hunter, Ball and Wells?

A. I don't think so; I don't remember your asking, but I think you asked Mr. Barber.

Q. Did you know at the time that Governor Steunenberg was here at Eau Claire or at the time the deal for Sweet's interest was closed by Mr. Palmer, that the five men I have named had made timber and stone entries in the Boise Basin?

A. No, sir.

Q. Did you know of any contest cases having been filed against their claims? A. No, sir.

Q. Did you know of any appeal having been taken by them or any of them from the decision of the local land office? A. No, sir.

Q. I will ask you as to where you first heard of these cases, these entries and these appeals?

(Deposition of S. G. Moon.)

A. So far as I know, the first that I heard of them was with reference made to them in this action.

Q. In this action or indictment?

A. It was in the indictment, yes.

Q. Did you personally or acting for the company at any time authorize Steunenberg or any other person to expend any money in defending the titles or claims of the five gentlemen I have named?

A. No, sir.

Q. Did you authorize the expenditure of any money or of employment of any attorney in taking appeals from the decisions in these cases?

A. No, sir.

Q. Did you know at any time, or do you know now of the fact that any money belonging to the company or to yourself or Mr. Barber was expended for that purpose?

A. No, sir.

Q. Have you any knowledge on the subject other than the allegations you find in the indictment and in this complaint?

A. No, sir.

Q. Did Governor Steunenberg at any time ask you to repay or attempt to collect from you and Mr. Barber or from the company, any money which he claimed he had expended in these contests or appeals?

A. No, sir.

Q. Did Governor Steunenberg or any other person prior to the indictment and filing of this suit have any talk with you or with them relative to these contest cases or appeals?

A. No, sir.

Q. At the time of Governor Steunenberg's death had you ever had this final statement that you ex-

(Deposition of S. G. Moon.)

pected to have? A. No, sir.

Q. At the time of his death state as to whether or not he was indebted to you or the company, or the company was indebted to him.

A. He was indebted to the company.

Q. Can you state approximately how much money he was indebted to the company?

A. Why, as I recollect it, six or eight thousand dollars.

Q. And did that indebtedness arise from excess of money sent him from what he had accounted for?

A. Yes, sir.

Q. On this last statement made to you by Governor Steunenberg here at Eau Claire in July, 1904, we find the following item: "December 14-03 to expense in trial cases \$100.00; December 14, to expense trial of case, \$200.00; December 30-03 to expense trial cases, \$380.00; January 2-04 to expense in trial of case, \$20.00," making an aggregate of \$700.00, charged in December 03 and January 04; under the head of "Expenses in trial cases"; were you informed or did you learn at that time or at any time as to what these items referred to?

A. No, sir.

Q. Did Governor Steunenberg advise you or tell you what cases they referred to?

A. No, sir, not that I remember of. I don't think he went over that report with me in detail at all.

Q. I see Mr. Cotten has noted after it, it was charged to attorney's fees. That was not at your direction, was it?

(Deposition of S. G. Moon.)

A. No, sir, I think he put that down attorney's fees because Steunenberg told him to.

Q. I show you a letter taken from the files of the company marked 334 and ask you if that is a letter received by you as Secretary and from Governor Steunenberg on or about that date?

A. Yes, sir.

Q. I notice that the correspondence shows that Governor Steunenberg reported to you from time to time, that he had acquired or purchased a certain number of titles without giving the details of what titles they were. I mean of the person from whom he had purchased, except in so far as will be shown by the deed sent you. This document 334 purports to be a list of lands which the Barber Lumber Company has title, initiatory, and including a large amount of lands which appears to have been entered by unsurveyed scrip. I ask you as to whether or not the reference to initiatory titles refers to scrip lands on which titles had not been perfected?

A. Yes, sir, that is my understanding of it.

Q. I will ask you if this statement 334 was the first and only detailed statement made to you or the company by Governor Steunenberg showing the names of the persons from whom purchased, description of the land and the details of the scrip transaction?

A. So far as I remember, yes.

Q. I don't want to bother reading that all into record, but we will offer it into evidence for the sake of fixing the time when it was received; that letter is dated when Mr. Moon?

(Deposition of S. G. Moon.)

A. June 28-04.

Q. And received in the usual course of business at or about that time? A. Yes.

Q. That is a complete list of the land including scrip, showing date, amount of scrip, whether it was in Mr. Moon's name or anybody else's. No. 334 offered in evidence and reads as follows:

Boise, Idaho, June 28, 1904.

S. G. Moon,

Sec. Barber Lumber Co.,

Eau Claire, Wis.

Dear Sir: Pursuant to your instructions of June 21st, relative to the list of lands upon which the Barber Lumber Company has title or initiated title, I submit the following:

Very truly,

FRANK STEUNENBERG.

LANDS UPON WHICH DEEDS HAVE BEEN
TAKEN AND RECORDED AND PATENT
ISSUED.

Homer G. Allen—E. $\frac{1}{2}$ NE. $\frac{1}{4}$ E. $\frac{1}{2}$ SE. $\frac{1}{4}$..18-6-6

William Judge—NE. $\frac{1}{4}$29 “

Louis M. Pritchard—NW. $\frac{1}{4}$20 “

Charles Patterson and Mary Patterson—

NW. $\frac{1}{4}$33 “

Willis C. Lane—NW. $\frac{1}{4}$28 “

Samuel Marcum—S. $\frac{1}{2}$ SE. $\frac{1}{4}$ Sec. 7 and S. $\frac{1}{2}$

SW. $\frac{1}{4}$ Sec. 8..... “

Smith Barker—SW. $\frac{1}{4}$33 “

Sedgwick Hoover and Lena Hoover—SW. $\frac{1}{4}$.28 “

George Ensworth and Eva Ensworth—E. $\frac{1}{2}$	
SE. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$	19 “
Frederick Thurman—NE. $\frac{1}{4}$	20 “
William F. Roberts—NW. $\frac{1}{4}$	25-7-5
Charles M. Wilmont and Florence Wilmont—	
NE. $\frac{1}{4}$	24 “
Lelia Lee—SE. $\frac{1}{4}$	1 “
Samuel Greig and Sarah Greig—Lot 4 in Sec.	
1, lots 1, 2 & 3 of Sec. 2 & S. $\frac{1}{2}$ NE. $\frac{1}{4}$	
& S. $\frac{1}{2}$ NW. $\frac{1}{4}$	2 “
William Pearson and Margaret Pearson—NE.	
$\frac{1}{4}$ Sec. 12, SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ Sec. 22, N $\frac{1}{2}$	
NW. $\frac{1}{4}$ and NW. $\frac{1}{4}$	27 “
Daniel P. Woodmore—SE. $\frac{1}{4}$	35 “
Charles Nelson—NE. $\frac{1}{4}$	23 “
John R. Gary & Edith Gary—SE. $\frac{1}{4}$	25-8-5
Frank Lane & Frankie Lane—E. $\frac{1}{2}$ NW. $\frac{1}{4}$	
E. $\frac{1}{2}$ SW. $\frac{1}{4}$	35 “
John U. Cassell—S. $\frac{1}{4}$	25 “
William W. Abrams & Aagot Abrams—Lots	
3 & 4 in Sec. 5 T. 7 N., R. 5 E. & S. $\frac{1}{2}$	
SW. $\frac{1}{4}$	32 “
Uriah Flint—NE. $\frac{1}{4}$	35 “
William Marcum—Lot 4 & SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ Sec.	
4 T. 7 N., R. 5 E. & S. $\frac{1}{2}$ SW. $\frac{1}{4}$	33 “
Carl J. Peterson—S. $\frac{1}{2}$ NW. $\frac{1}{4}$, N. $\frac{1}{2}$ SW. $\frac{1}{4}$	33-8-5
John C. Monroe—NE. $\frac{1}{4}$	25-7-5
Mary A. Monroe—SE. $\frac{1}{4}$	24 “
Mack Gillum—NE. $\frac{1}{4}$	26-8-5
Altha Gillum—S. $\frac{1}{2}$ NW. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$	25 “
Lewis L. Folsom—NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ Sec. 18 &	
SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ & E. $\frac{1}{2}$ SW. $\frac{1}{4}$	7-7-5

Joseph French—SW. $\frac{1}{4}$	21-6-6
Joseph M. Hollister—SE. $\frac{1}{4}$	7-7-5
Lenora Hollister—N. $\frac{1}{2}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$	18-7-5
Albert B. Ewing—Lots 3 & 4 & E. $\frac{1}{2}$ SW. $\frac{1}{4}$	7-7-6
Clara B. Ewing—E. $\frac{1}{2}$ NW. $\frac{1}{4}$ W. $\frac{1}{2}$ NE. $\frac{1}{4}$	34-7-5
Edward Butler—SE. $\frac{1}{4}$	32-6-6
William H. Lewin—NE. $\frac{1}{4}$	32 “
Martin S. Stephenson—E. $\frac{1}{2}$ NE. $\frac{1}{4}$ Sec. 33 & W. $\frac{1}{2}$ NW. $\frac{1}{4}$	34-7-5
Lettie L. Stephenson—SE. $\frac{1}{4}$	34-7-5
James O. Baker—SE. $\frac{1}{4}$	25-7-5
Wilbert F. Wilmot—Lots 3, 4, 5, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$	26-7-6
Ery A. Wilmot—NW. $\frac{1}{4}$	17-6-6
Arthur E. Brookhart—NW. $\frac{1}{4}$	35-7-5
Adella C. Brookhart—S. $\frac{1}{2}$ SW. $\frac{1}{4}$ S. $\frac{1}{2}$ SE. $\frac{1}{4}$	17-6-6
James H. Hamilton—E. $\frac{1}{2}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ & NW. NE.....	22-7-5
Thaddeus M. Glass and Lula M. Glass—NE. $\frac{1}{4}$	13 “
Uriah F. McBriney and Eva McBriney—SE. $\frac{1}{4}$	11 “
Edward Brisbin—Lot 3 and SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ and N. $\frac{1}{2}$ SW. $\frac{1}{4}$	1-7-5
William F. Snow—W. $\frac{1}{2}$ NW. $\frac{1}{4}$ W. $\frac{1}{2}$ SW. $\frac{1}{4}$	22 “
George M. Cutler—NW. $\frac{1}{4}$	13 “
Henry A. Snow and Minnie Snow—N. $\frac{1}{2}$ SW. $\frac{1}{4}$, S. $\frac{1}{2}$ NW. $\frac{1}{4}$ of Sec. 8 & S. $\frac{1}{2}$ SW. $\frac{1}{4}$ & S. $\frac{1}{2}$ SE. $\frac{1}{4}$	8 “

Samuel C. Bowen and Emma C. Bowen—SW.

$\frac{1}{4}$ 17 “

Walter L. Harrison and Alta—Lot 3 & NE. $\frac{1}{4}$

SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$... 30-7-5

Lewis K. Burns and Dora Burns—NW. $\frac{1}{4}$... 24 “

Gustave H. Rothine—S $\frac{1}{2}$ SW. $\frac{1}{4}$, S. $\frac{1}{2}$ SE.

$\frac{1}{4}$ 5 “

Chas. A. Walker—N. $\frac{1}{2}$ NW. $\frac{1}{4}$, N. $\frac{1}{2}$ NE. $\frac{1}{4}$ 8 “

John H. Byro—SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ Sec. 1 & E. $\frac{1}{2}$

NW. $\frac{1}{4}$, & SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ 12 “

Henry F. Benedix—S. $\frac{1}{2}$ NW. $\frac{1}{4}$, N. $\frac{1}{2}$ SW.

$\frac{1}{4}$ 5 “

Dean West and Louisa West—S. $\frac{1}{2}$ SE. $\frac{1}{4}$;

Sec. 28, S. $\frac{1}{2}$ SW. $\frac{1}{4}$ Sec. 27 & NW. $\frac{1}{4}$... 23 “

Henry Ries—E. $\frac{1}{2}$ SW. $\frac{1}{4}$ & Lots 6, 7..... 6-7-6

Gustav A. Link—SW. $\frac{1}{4}$ 24-7-5

Mary Link—N. $\frac{1}{2}$ SE. $\frac{1}{4}$ Sec. 22 & N. $\frac{1}{2}$ SW.

$\frac{1}{4}$ 23 “

Louis Nibbler—SE. $\frac{1}{4}$ 23 “

Patrick H. Downs—N. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW.

$\frac{1}{4}$ 17 “

Henry L. Clyne—SE. $\frac{1}{4}$ 6 “

Norman H. Young—S. $\frac{1}{2}$ NW. $\frac{1}{4}$ Sec. 17 &

SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$ 18 “

John D. French—SE. $\frac{1}{4}$ 20-6-6

Homer G. Granger—NE. $\frac{1}{4}$ 14-7-5

Walter S. Walker—SE. $\frac{1}{4}$ 31-6-6

Harry S. Worthman—W. $\frac{1}{2}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$

SW. $\frac{1}{4}$ & NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ 29 “

John Kinkaid—SE. $\frac{1}{4}$ 7-6-5

Frank B. Nickerson and wife—E. $\frac{1}{2}$ NW. $\frac{1}{4}$,

NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ and lot 1..... 30-7-5

Oliver Johnson—SW. $\frac{1}{4}$	33-7-4
Aaron Ownbey—E. $\frac{1}{2}$ of SW. $\frac{1}{4}$, S. $\frac{1}{2}$ SE. $\frac{1}{4}$	9-7-8
Edward J. Dockey—E. $\frac{1}{2}$ SE. $\frac{1}{4}$, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$	24-7-8
Eva Hunt Dockery—Lots 3, 4, S. $\frac{1}{2}$ NW. $\frac{1}{4}$..	4-7-8
Wm. E. Cavanaugh—N. $\frac{1}{2}$ NW. $\frac{1}{4}$, N. $\frac{1}{2}$ NE. $\frac{1}{4}$	15 “
Elof Anderson—SE. $\frac{1}{4}$..	12-7-7
Emma M. Anderson—Lots 1, 2, 3, and 4.....	1-7-7
John M. Neil—N. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW. $\frac{1}{4}$	23-7-8
Maud Neil—Lots 1 & 2 & S. $\frac{1}{2}$ NE.	4-7-8
James Ownbey—NE. $\frac{1}{4}$	13-7-7
Jackson Ownbey—NW. $\frac{1}{4}$	13 “
Burt T. Parker—N. $\frac{1}{2}$ SE. $\frac{1}{4}$ & S. $\frac{1}{2}$ NE. $\frac{1}{4}$..	9-7-8
Thos. F. Kelley—SW. $\frac{1}{4}$	10 “
Mary E. Ownbey—Lot 2, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ W. $\frac{1}{2}$ SE. $\frac{1}{4}$	3-7-7
Edward E. Butler and Elvie Butler—Lot 4, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ & W. $\frac{1}{2}$ SW. $\frac{1}{4}$	2-7-8
George Bilderback and Emma Bilderback— N. $\frac{1}{2}$ SW. $\frac{1}{4}$ Sec. 27, N. $\frac{1}{2}$ SE. $\frac{1}{4}$	28 “
Merritt Twogood—NW. $\frac{1}{4}$	13 “
Alfred Bayhouse—SE. $\frac{1}{4}$	3 “
Henry Bayhouse—SW. $\frac{1}{4}$	3 “
John Youngkin and Susie Youngkin—NE. $\frac{1}{4}$	12-7-7
Wm. H. Gibberd and Addie Gibberd—E. $\frac{1}{2}$ NW. $\frac{1}{4}$, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$..	12 “
Andrew Hanson—N. $\frac{1}{2}$ NE $\frac{1}{4}$ Sec. 22, S. $\frac{1}{2}$ SE. $\frac{1}{4}$	15-7-8
Addie Gibberd and Wm. H. Gibberd—Lots 3, 4, & S. $\frac{1}{2}$ NW. $\frac{1}{4}$	2-7-7
George Butler and Louisa Butler—N. $\frac{1}{2}$ SW.	

$\frac{1}{4}$ N. $\frac{1}{2}$ SE. $\frac{1}{4}$	4-7-8
Moses Kempner and Annie Kempner—W. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ Sec. 19 SW. $\frac{1}{4}$ NW. $\frac{1}{4}$	20-7-8
Wm. F. Noble—NE. $\frac{1}{4}$	21-7-8
Harry Eagleson—S. $\frac{1}{2}$ NE. $\frac{1}{4}$ S. $\frac{1}{2}$ NW. $\frac{1}{4}$..	25-7-8
General Willhite—SW. $\frac{1}{4}$	32-7-8
Elizabeth Willhite—NE. $\frac{1}{4}$ Sec.....	31 “
Jacob Nusbaum—S. $\frac{1}{2}$ NE. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$	24 “
Chas. Eagleson—S. $\frac{1}{2}$ SW. $\frac{1}{4}$, S. $\frac{1}{2}$ SE. $\frac{1}{4}$	25 “
Edward H. Starn—NW. $\frac{1}{4}$	10 “
Mary Starn—SE. $\frac{1}{4}$	10 “
Hugo Bayhouse and Delilah Bayhouse—NW. $\frac{1}{4}$	27-7-8
Harrison Ownbey and Margaret Ownbey—S. W. $\frac{1}{4}$	13-7-7
Chas. S. Kingsley—SW. $\frac{1}{4}$	14-7-8
C. F. B. Kingsley—NW. $\frac{1}{4}$	14 “
Fannie Hart—SW. $\frac{1}{4}$	11 “
Irving W. Hart—NW. $\frac{1}{4}$	11 “

Lands upon which deed has been taken, based upon receiver's receipt and patent not received: Number preceding name is number of Timber and Stone entry. “R” following name indicates that deed is of record.

500 George Warren and Harriet Warren	E. $\frac{1}{2}$ NW. $\frac{1}{4}$, E. $\frac{1}{2}$ SW. $\frac{1}{4}$	32-6-6
338 George Gibson	NW. $\frac{1}{4}$	21 “
503 Robert E. Heel.....	Lots 1, 2 and 3	31 “
343 Lola Thurman	SW. $\frac{1}{4}$...	20 “
507 Sherman Thompson and Jennie Thompson	SW. $\frac{1}{4}$ NE $\frac{1}{4}$, S. $\frac{1}{2}$ NW. $\frac{1}{4}$	34-7-4
457 Charles Pratt and		

	Agusta Pratt .....RP.	S. $\frac{1}{2}$ NW. $\frac{1}{4}$, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ .....33 "
376	Charles Arbuckle .....R.	SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, W. $\frac{1}{2}$ SE. $\frac{1}{4}$ S. 27, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....34-8-5
378	Susan Arbuckle .....R.	S. $\frac{1}{2}$ SE. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ .....19-7-5-
681	David G. Thompson ....R.	SE. $\frac{1}{4}$ .....26-8-5
371	Gertrude E. Lewin ....R.	NE. $\frac{1}{4}$ .....28-7-5
249	John Keane and Maggie Keane .....R.	W. $\frac{1}{2}$ NE. $\frac{1}{4}$, W. $\frac{1}{2}$ SE. $\frac{1}{4}$ ....21 "
383	Henry T. James .....R.	SE. $\frac{1}{4}$ .....13-7-5
368	John M. Williams .....R.	S. $\frac{1}{2}$ SW. $\frac{1}{4}$ S. 23 and S. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....22-7-5
237	Kate Hunter .....R.	SW. $\frac{1}{4}$ .....15 "
370	Roy Dye .....R.	SE. $\frac{1}{4}$ .....15 "
499	William Humphrey ....R.	
498	Lydia Humphrey .....R.	E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Lots 1, 2, of S. 18—7-6 and SE. $\frac{1}{4}$ S. ....33-7-5
369	Henry Humphrey .....R.	E. $\frac{1}{2}$ NW. $\frac{1}{4}$ S. 28, E. $\frac{1}{2}$ SW. $\frac{1}{4}$ 21-7-5
390	John G. McDonald .....R.	W. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{2}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....31 "
240	Nellie J. Thompson ....R.	SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ Lot 4, S. 30, NE. $\frac{1}{4}$ NW. $\frac{1}{4}$, Lot 1, S. ....31 "
256	Chas. W. Ballentine ....P.	NE. $\frac{1}{4}$... 7 "
592	John W. Rose .....RP.	Lots 1, 2, and S. $\frac{1}{2}$ NE. $\frac{1}{4}$ ....1-6-7
521	Jens Olsen .....R.	SE. $\frac{1}{4}$ .....25-7-7
522	John Chirstenson .....R.	NE. $\frac{1}{4}$ .....25 "
589	Mary Thompson.....RP.	E. $\frac{1}{2}$ NW. $\frac{1}{4}$ and Lots 1, 2,...19-7-8
579	Alice Fordney .....RPX.	Lots 1, 2, S. $\frac{1}{2}$ NE. $\frac{1}{4}$ 3-7-8
648	Emma Blandford ....RP.	S. $\frac{1}{2}$ SE. $\frac{1}{4}$ S. 11, E. $\frac{1}{2}$ NE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$... 14-7-7
580	Ida Twogood .....R.	SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, S. $\frac{1}{2}$ SW. $\frac{1}{4}$, S. 4, NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ 9-7-8
668	Annie Kempner .....RP.	NE. $\frac{1}{4}$ .....32-7-8
611	Geo. T. Ellis and Jennie Ellis .....R.	SE. $\frac{1}{4}$ .....12-7-8
654	Helen Eagleson .....RP.	S. $\frac{1}{2}$ NW. $\frac{1}{4}$ S. 23, S. $\frac{1}{2}$ NE. $\frac{1}{4}$ 22-7-8
652	Chas. R. Beckley ....RP.	N. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ .....26 "
650	Mantie Beckley .....RP.	SW. $\frac{1}{4}$ .....22-7-8
657	Caroline Alexander ..RP.	E. $\frac{1}{2}$ NE. $\frac{1}{4}$ N. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....34 "
610	Benj. Eagleson and M. L. Eagleson .....RP.	N. $\frac{1}{2}$ SW. $\frac{1}{4}$ N. $\frac{1}{2}$ SE. $\frac{1}{4}$ .....25 "

655	Pearl Nusbaum.....RP.	SE.¼	22 "
608	Emerson Sensenig ....RP.	S.½ SE.¼ NE.¼ SE.¼ SE.¼ NE.¼	26 "
656	Lucretia Sensenig ....RP.	SW.¼	23 "
621	Frank Bayhouse ....RP.	N.½ SE.¼, N.½ SW.¼	19-7-8
667	Jeanette Cooper .....RP.	SE.¼ SW.¼ S.½ SE.¼, Sec. 30, SW.¼ SW.¼	29 "
651	Henry Schmelzel and E. Schmelzel .....RP.	SE.¼	27 "
647	Walter L. Wilson ....RP.	Lots 1, 2, E.½ NW.¼	31 "
646	Lena D. Wilson.....RP.	SE.¼	32 "
646	Sonora A. Joplin ....RP.	SW.¼	33 "
644	Andrew F. Joplin ....RP.	Lots 1, 2, 3, 4	5-6-8
622	George Bayhouse ....RP.	NE.¼	28-7-8
637	Wm. H. Martin .....RP.	SE.¼	7 "
636	Henrietta Martin ....RP.	E.½ NW.¼, Lots 1, 2,	7 "
627	James F. Belk and Angie Belk .....RP.	SW.¼	12 "
624	Benj. E. Stahl .....RP.	SW.¼	8 "
635	Arietta H. Stahl ....RP.	E.½ SW.¼, Lots 3, 4,	7 "
640	Elma E. Gardner.....RP.	S.½ SW.¼ NW.¼ SW.¼, Sec. 12, NE.¼ SE.¼	11-7-7
564	John A. Youngkin and Susie Youngkin .....RP.	Lots 1, 2, S.½ NE.¼	2-7-7
594	Clifton C. Bliven and Lottie M. Bliven ....RP.	E.½ NE.¼ N.½ SE.¼	24 "
593	Frank R. McDonald Ellen E. McDonald ...RP.	Lots 2, 3, SW.¼ NE.¼, SE.¼ NW.¼	6-6-8
616	Edgar E. Bush .....RP.	S.½ NW.¼, NE.¼ NW.¼, NW.¼ SW.¼	21-7-8
613	Walter Joplin .....RP.	W.¼ NE.¼ SE.¼ NE.¼ NE.¼ SE.¼	20-7-8
746	Helen Sullivan .....RP.	NW.¼	22 "
745	Joseph Sullivan .....RP.	NE.¼	27 "
614	Geo. W. Butler and Louisa Butler .....RP.	E.½ SE.¼ SW.¼ SE.¼ SE.¼ NE.¼	17 "
804	Frank P. Weasel Nora Weasel .....RP.	SE.¼	31 "
805	George M. York .....RP.	Lots 1, 2, 3, 4,	30 "

860	Lee J. Roberts	RP.	NE. $\frac{1}{4}$	10 "
861	Adah Roberts	RP.	Lot 3, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ E. $\frac{1}{2}$ SW. $\frac{1}{4}$	3-7-7
858	Rollin Lothrop	RP.	NE. $\frac{1}{4}$	35-7-8
857	Earl Harrington.. ...	RP.	NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ N. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 23, NW. $\frac{1}{4}$ NW. $\frac{1}{4}$	24 "
862	Elmer G. Dodds	RP.	NW. $\frac{1}{4}$...	32 "
863	Hannah Dodds	R.	Lot 4, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ S. $\frac{1}{2}$ SE. $\frac{1}{4}$	18 "
943	Ada V. Austin	RP.	N. $\frac{1}{2}$ SW. $\frac{1}{4}$ N. $\frac{1}{2}$ SE. $\frac{1}{4}$	15-7-7
944	Willard C. Austin....	RP.	N. $\frac{1}{2}$ SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ Sec. 22	22-7-7
			NE. $\frac{1}{4}$ SE. $\frac{1}{4}$	21 "
971	Burt Resser and Edith Resser	RP.	S. $\frac{1}{2}$ NW. $\frac{1}{4}$, Lots 3 and 4....	1-6-7
978	Edward Lockhart and Nellie Lockhart	RP.	N. $\frac{1}{2}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ Sec. 1, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$	1 12-6-7
994	John J. Pawley	RP.	E. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 32, W. $\frac{1}{2}$ SW. $\frac{1}{4}$	33-6-8
991	Hiram Maynard	RP.	E. $\frac{1}{2}$ NE. $\frac{1}{4}$, Sec. 31, W. $\frac{1}{2}$ NW. $\frac{1}{4}$..	32-6-8
990	Benj. R. Allen	RP.	NE. $\frac{1}{4}$	30-6-8
992	Samuel E. Vance	RP.	NW. $\frac{1}{4}$	29 "
993	John E. Hobbs.....	RP.	SW. $\frac{1}{4}$	29"
963	O. R. Jaycox	RP.	W. $\frac{1}{2}$ NE. $\frac{1}{4}$ E. $\frac{1}{2}$ NW. $\frac{1}{4}$	17 "
962	Luella Jaycox	RP.	Lots 4, 5, 6 and 7	6 "
	S. S. Horner S. D. Horner and	RP.	W. $\frac{1}{2}$ SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 26, NE. $\frac{1}{4}$, SE. $\frac{1}{4}$, Sec. 27, W. $\frac{1}{2}$ NE. $\frac{1}{4}$ E. $\frac{1}{2}$ NW. $\frac{1}{4}$	22-7-7
	Jennie Horner	RP.	E. $\frac{1}{2}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ and NW. SW.	24-7-8
1036	George G. Eagleson	R.	E. $\frac{1}{2}$ NE. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$	27-6-4
1037	Mary J. Eagleson	R.	Lot 2, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, W. $\frac{1}{2}$ SE. $\frac{1}{4}$	1 "
1065	John K. Woodburn....	R.	SW. $\frac{1}{4}$	15 "
1050	Frank R. Martin	R.	NE. $\frac{1}{4}$	21 "
1048	A. T. Ellis	R.	N. $\frac{1}{2}$ NW. $\frac{1}{4}$, W. $\frac{1}{2}$ NE. $\frac{1}{4}$	22 "
1049	Charles W. Clawson ...	R.	SW. $\frac{1}{4}$	29 "
1052	Geo. R. Avery	R.	SE. $\frac{1}{4}$...	29 "
1051	Joseph Erhmantraut ...	R.	NW. $\frac{1}{4}$...	15 "
1057	Margaret Erhmantraut..	R.	SE. $\frac{1}{4}$	15 "

1055	Willis A. Ross .....R.	SE. $\frac{1}{4}$	20 "
1056	Josie M. Ross .....R.	SW. $\frac{1}{4}$	20 "
1053	Andrew Campbell .....R.	NW. $\frac{1}{4}$	21 "
1060	William R. Coleman ...R.	W. $\frac{1}{2}$ NE. $\frac{1}{4}$ W. $\frac{1}{2}$ SE. $\frac{1}{4}$	28-6-4
1039	Thos. L. Martin.....R.	SW. $\frac{1}{4}$	23 "
1066	W. B. Davidson .....R.	NE. $\frac{1}{4}$	20 "
1063	Rice J. Harbaugh.....R.	S. $\frac{1}{2}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ NW. $\frac{1}{4}$	22 "
1059	Clara M. Snow .....R.	NE. $\frac{1}{4}$	15 "
	Henry F. Cassidy .....R.	NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, S. $\frac{1}{2}$ SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$	17 "
1035	Margaret Scully .....R.	NW. $\frac{1}{4}$	20 "
1058	Harry B. Noble .....R.	SW. $\frac{1}{4}$	28-6-4
1061	Chas. B. Faraday .....R.	NW. $\frac{1}{4}$	28 "
1155	John O. Lytle	NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 9, W. $\frac{1}{2}$ SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SW. $\frac{1}{4}$	4-5-4
1160	James R. Venable.....R.	Lots 5, 6, 7, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$	4 "
1054	Riley Reeves .....R.	NW. $\frac{1}{4}$	29-6-4
1046	Loren T. Kinert .....R.	SW. $\frac{1}{4}$..	21 "
1038	Wheeler H. Martin	SE. $\frac{1}{4}$...	21 "
	Joseph Penrod .....R.	NE. $\frac{1}{4}$	29 "
1040	Anna Fisher .....R.	E. $\frac{1}{2}$ SE. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$ SW. $\frac{1}{4}$ NE. $\frac{1}{4}$	12 "

The following lands are under mortgage to L. M. Pritchard for the sum of \$1393.50:

Samuel Swan—SE. $\frac{1}{4}$35-8-5

Emma Swan—SW. $\frac{1}{4}$25-7-5

Under date of February 1, 1904, the following lands were applied for and list approved by the local land office at Boise, Idaho.

Lot 1 and SW. $\frac{1}{4}$ of the N-E. $\frac{1}{4}$ of Sec. 6, N. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of Sec. 9, SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ and NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of Sec. 17, Lot 1 and NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of Sec. 19, SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ and SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of Sec. 20 NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of

N. P. Sur-
veyed Scrip
assigned to
S. G. Moon
and laid by
Frank
Steunen-
berg, his
attorney, in
fact.

Boise L. O. Sec. 27 NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ and
 #148, GLO. N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of Sec. 28
 #10,612. Lot 2 in Sec. 30 Lot 2 in Sec.
 31 SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of Sec. 32,
 S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of Sec. 33 SE.
 $\frac{1}{4}$ of NE. $\frac{1}{4}$ of Sec. 35, all in
 Township 7 N. R. 5 all East of
 Boise Principal Meridian,
 Idaho. Also Lots 3, 4 and 5
 of Sec. 6, SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$
 and N. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of Sec. 8
 NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of Sec. 17 N.
 $\frac{1}{2}$ of SE. $\frac{1}{4}$ and NE. $\frac{1}{4}$ of
 SW. $\frac{1}{4}$ of Sec. 30, all in T. 7
 N., R. 8, all East of Boise
 Principal Meridian, Idaho.
 Also the SW. $\frac{1}{4}$ of the NW.
 $\frac{1}{4}$ and SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of
 Sec. 10, NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$
 of Sec. 13, SW. $\frac{1}{4}$ of NE.
 $\frac{1}{4}$ of Sec. 19, SE. $\frac{1}{4}$ of NW.
 $\frac{1}{4}$ of Sec. 22, SE. $\frac{1}{4}$ of NW.
 $\frac{1}{4}$ of Sec. 23, E. $\frac{1}{2}$ of NE. $\frac{1}{4}$
 of Sec. 25, NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of
 Sec. 28, NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of
 Sec. 32 and N. $\frac{1}{2}$ of NW. $\frac{1}{4}$
 of Sec. 23, all in T. 6 N., R. 4
 all East of Boise Principal
 Meridian, Idaho, containing
 1662.95 acres.

Title No. 202.

Under date of April 14, 1904, the following lands
 were applied for and list approved by the local land

office at Boise, Idaho.

The NE. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of Sec. 3, the SW. $\frac{1}{4}$ of the SE. $\frac{1}{4}$ of Sec. 5, the NW. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ of Sec. 8, the NW. $\frac{1}{4}$ of the NW. $\frac{1}{4}$ of Sec. 9, the SE. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of Sec. 9 the NW. $\frac{1}{4}$ of the NW. $\frac{1}{4}$ of Sec. 10, the NE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ of Sec. 10, the NE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ and NW. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ and SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of Sec. 13, the SE. $\frac{1}{4}$ of the SE. $\frac{1}{4}$ of Sec. 14, the SW. $\frac{1}{4}$ of the NW. $\frac{1}{4}$ of Sec. 15, Lots 1 and 2, and the SW. $\frac{1}{4}$ of the SE. $\frac{1}{4}$ of Sec. 22, the NE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$, and the SE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ of Sec. 23, the NE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ the NW. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ the SW. $\frac{1}{4}$ of the NE. $\frac{1}{4}$, the SW. $\frac{1}{4}$ of the NW. $\frac{1}{4}$ and the SE. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of Sec. 26, the NE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ the NW. $\frac{1}{4}$ of the NE. $\frac{1}{4}$, the SE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ and lot 7, Sec. 27, the NE. $\frac{1}{4}$ of the SW. $\frac{1}{4}$, of Sec. 28, the SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ and the NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of Sec. 32, all in Twp. 5 N., R. 4 all E. of the Boise Principal Meridian, also the SW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of Sec. 4 the SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of Sec. 5, the NW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$, the SW. $\frac{1}{4}$ of the SE. $\frac{1}{4}$ and the NE. $\frac{1}{4}$ of the SE. $\frac{1}{4}$ of Sec. 13, the NE. $\frac{1}{4}$ of the SE. $\frac{1}{4}$ of Sec. 14, and SW. of SE. $\frac{1}{4}$ of Sec. 18, all in T. 4 N., R. 4, all E. of the Boise Principal Meridian, all in Boise County,

N. P. R. R.
Surveyed
Scrip assigned to
S. G. Moon
and laid by
Frank
Steunenberg his
attorney in
fact.

Idaho; also the NE. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ and the SE. $\frac{1}{4}$ of the NW. $\frac{1}{4}$ of Sec. 18 in T. 7 N., R. 5 E. of the Boise principal meridian; also the NE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ of Sec. 24, the NE. $\frac{1}{4}$ of the SW. $\frac{1}{4}$, the NW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$, the NE. $\frac{1}{4}$ of the SE. $\frac{1}{4}$ and the NW. $\frac{1}{4}$ of the SE. $\frac{1}{4}$ of Sec. 28, all in T. 7 N., R. 4 E. of the Boise principal meridian; also the NE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$ of Sec. 9 the SW. $\frac{1}{4}$ of the SE. $\frac{1}{4}$ of Sec. 10, the SW. $\frac{1}{4}$ of the SE. $\frac{1}{4}$ of Sec. 12, the SE. $\frac{1}{4}$ of Sec. 25, the NW. $\frac{1}{4}$ of the SE. $\frac{1}{4}$ of Sec. 27, the SE. $\frac{1}{4}$ of the SE. $\frac{1}{4}$ of Sec. 30, the E. $\frac{1}{2}$ of the SW. $\frac{1}{4}$ and the W. $\frac{1}{2}$ of the SE. $\frac{1}{4}$ of Sec. 34, all in T. 6 N., R. 4 all east of the Boise principal meridian; also the N. $\frac{1}{2}$ of the SE. $\frac{1}{4}$ of Sec. 6 the NE. $\frac{1}{4}$ of the NW. $\frac{1}{4}$ of Sec. 8 the SE. $\frac{1}{4}$ of the SE. $\frac{1}{4}$ of Sec. 19, the W. $\frac{1}{2}$ of the SW. $\frac{1}{4}$ and the NE. $\frac{1}{4}$ of the SW. $\frac{1}{4}$ of Sec. 20, all in T. 7 N., R. 8 all east of the Boise principal meridian, all in Boise County, Idaho, containing 2,479.35 acres.

Title No. 203.

Land Office L. O. #11,649.

Approved by Com. G. L. O.

See letter Aug. 3rd, 1905.

E. E. GARRETT,
Recorder.

Under date of November 12, 1903, the following list of lands was filed in the local land office at Boise, Idaho, and duly approved.

N. P. Land Deal #1.	<p>The unsurveyed S. $\frac{1}{2}$ SW. $\frac{1}{4}$, Sec. 23, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, S. $\frac{1}{2}$ SW. $\frac{1}{4}$, S. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 25, NE. $\frac{1}{4}$ E. $\frac{1}{2}$ SE. $\frac{1}{4}$ Sec. 35, T. 8 N., R. 7 E., E. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 31, S. $\frac{1}{2}$ SW. $\frac{1}{4}$, SW. $\frac{1}{4}$ SE. $\frac{1}{2}$, Sec. 33, T. 8 N., R. 8 E., NW. $\frac{1}{4}$ W. $\frac{1}{2}$ SE. $\frac{1}{4}$, SW. $\frac{1}{4}$ Sec. 19, SW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 21, W. $\frac{1}{2}$ NW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 29, S. $\frac{1}{2}$ NW. $\frac{1}{4}$, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, SW. $\frac{1}{4}$ SW. $\frac{1}{4}$, W. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 33, T. 7 N., R. 9 E., SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 35, T. 8 N., R. 7 E., B. M., containing 1640 acres, in State of Idaho.</p>	Unsur- veyed N. P. R. R. Scrip.
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Title No. 206.	<p>The unsurveyed NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW. $\frac{1}{4}$, NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, S. $\frac{1}{2}$ SE. $\frac{1}{4}$, Sec. 26, T. 8 N., R. 7 E., NW. $\frac{1}{4}$, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 30, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 32, T. 8 N., R. 8 E., NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW. $\frac{1}{4}$, Sec. 4, T. 6 N., R. 9 E., SW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 18, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 28, N. $\frac{1}{2}$ NW. $\frac{1}{4}$, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 30, and NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 32, T. 7 N., R. 9 E., B. M., containing 100 acres, in State of Idaho.</p>	Unsur- veyed N. P. R. R. Scrip.
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Lot	2,	16.44
	7,	7.43
	8,	38.72
	9,	39.92
	10,	13.83
SE NE.		40.00

156.34 A

Sec. 25 — 5 N— 4 E.

Taken with scrip brought from M. G. Cage —
1/28/05.

Title No. 200.

NOTICE.

Notice is hereby given that the undersigned, by his attorney in fact, whose postoffice address is Caldwell, Idaho, did on the 1st day of October, 1904, make application to select, under Act of June 4th, 1897 (30 Stat., 36), the following described tracts of land, to-wit:

Lot 1, Sec. 26, T. 7 N. R. 4 E.; lot 3, Sec. 5, lots 3, 4, 7 and 8, Sec. 7, all in T. 6 N, R. 5 E.; lot 2, Sec. 12, lots 5 and 9, Sec. 13, Lots 4, 5, 8, 10, 11, Sec. 24, lots 1, 3, 4, 5, 6, 7, Sec. 25, lots 1, 2, 3, 4, Sec. 26, all in T. 6 N, R 4 E.; lots 2, 3, 7, 9, 10, 11, 15, 16, Sec. 3, lot 1, Sec. 25, all in T 5 N., R. 4 E., containing 954.10 acres, all in Boise County, Idaho.

Protests or contests against said selection on the ground that said land or any portion thereof is more valuable for mineral than for agricultural or any other purpose, or for any other cause, will be received by the Register and Receiver of the United States Land Office at Boise, Idaho, at any time prior

to the expiration of the thirty days required for publication of this notice.

This notice will be posted upon the land by W. R. Lake, the duly authorized agent of said Sumner G. Moon, and his attorney in fact, Frank Steunenberg.

Dated at Boise, Idaho, this 6th day of October, 1904.

SUMNER G. MOON.

By FRANK STEUNENBERG,
Attorney in fact.

Title No. 204.

NOTICE.

Notice is hereby given that the undersigned, by his attorney in fact, whose postoffice address is Caldwell, Idaho, did, on the 1st day of October, 1904, make application to select, under Act of June 4th, 1897 (30 Stat., 36) the following described tracts of land, to wit:

NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 5, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 9, Relinquished Sec. 9, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 20, NE. $\frac{1}{4}$, SW. $\frac{1}{4}$, Sec. 33, all in T. 7 N., R. 5 E., SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 26, SW. $\frac{1}{4}$, NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 28, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec., 33, all in T. 7 N., R. 4 E.; SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, Sec. 5, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec 7, T. 6 N., R. 5 E.; NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 12, NW. $\frac{1}{4}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$, Sec. 13, NW $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 25, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 25; SE. $\frac{1}{4}$ SE. $\frac{1}{4}$, Sec. 26, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$, Sec. 30, SW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 34, all in T. 6 N., R. 4 E.; the SW. $\frac{1}{4}$ SW. $\frac{1}{4}$, Sec. 20, T. 5 N., R. 4 E., containing 879.98 acres, all in Boise County, Idaho.

Protests or contests against said selection on the

ground that said land or any portion thereof is more valuable for mineral than for agricultural or any other purpose, or for any other cause, will be received by the Register and Receiver of the United States Land Office at Boise, Idaho, at any time prior to the expiration of the thirty days required for publication of this notice.

This notice will be posted upon the land by W. R. Lake, the duly authorized agent of said Sumner G. Moon and his attorney in fact, Frank Steunenbergh.

Dated at Boise, Idaho, this 6th day of October, 1904.

SUMNER G. MOON.

By FRANK STEUNENBERGH,

Attorney in fact.

Title No. 205.

TITLE NO. 222.

Notice is hereby given, that the Northern Pacific Railway Company, by Thomas Cooper, its Land Commissioner, whose postoffice address is St. Paul, Minn., did, on the 26th day of April, 1905, make application to select under the Act of March 2, 1899 (30 Stat. 993), the following tracts of unsurveyed lands, to wit: The NW. $\frac{1}{4}$ of the NE. $\frac{1}{4}$, the NE. $\frac{1}{4}$ of the NW. $\frac{1}{4}$, the NW. $\frac{1}{4}$ of the NW. $\frac{1}{4}$, the SW. $\frac{1}{4}$ of the NW. $\frac{1}{4}$ of Sec. 20. The NE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$, the NW. $\frac{1}{4}$ of the NE. $\frac{1}{4}$, the SW. $\frac{1}{4}$ of the NE. $\frac{1}{4}$, the SE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$, the SE. $\frac{1}{4}$ of the NW. $\frac{1}{4}$, the SW. $\frac{1}{4}$ of the NW. $\frac{1}{4}$, the NE. $\frac{1}{4}$ of the SW. $\frac{1}{4}$, the NW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$, Sec. 30, all in T. 6 N., R. 5 E., B. M., Idaho.

Protests or contests against said selection on the

ground that said land or any portion thereof is more valuable for mineral than for agricultural or other purposes or for any other cause will be received by the Register and Receiver of the United States Land Office at Boise, Idaho, at any time prior to the expiration of the 30 days required for the publication of this notice.

This notice will be posted on the land by W. R. Lake, the duly authorized agent of said Northern Pacific Railway Company, and its Land Commissioner, Thomas Cooper.

Dated at Boise, Idaho, this 8th day of July, 1905.

THE NORTHERN PACIFIC RAILWAY
COMPANY,

By THOMAS COOPER,
Land Commissioner.

Scrip filed April 26/1905.

N. P. Land Deal #2.

(Unsurveyed.)

TITLE NO. 222.

Notice is hereby, that the Northern Pacific Railway Company by Thomas Cooper, its Land Commissioner, whose postoffice address is St. Paul, Minn., did on the 26th day of April, 1905, make application to select under the Act of July 1, 1898 (30 Stat. 597-620), the following described tracts of unsurveyed lands, to-wit: The NE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$, the NW. $\frac{1}{4}$ of the NE. $\frac{1}{4}$, the SW. $\frac{1}{4}$ of the NE. $\frac{1}{4}$, the NE. $\frac{1}{4}$ of the NW. $\frac{1}{4}$, the SE. $\frac{1}{4}$ of the NE. $\frac{1}{4}$, the NE. $\frac{1}{4}$ of the SE. $\frac{1}{4}$, the SE. $\frac{1}{4}$ of the NW. $\frac{1}{4}$, the NE. $\frac{1}{4}$ of the SW. $\frac{1}{4}$, the SE. $\frac{1}{4}$ of the SE. $\frac{1}{4}$, the SW. $\frac{1}{4}$ of the SW. $\frac{1}{4}$, the SE. $\frac{1}{4}$ of the SW. $\frac{1}{4}$, the NW. $\frac{1}{4}$

of the SE. $\frac{1}{4}$ and the SW. $\frac{1}{4}$ of the SE. $\frac{1}{4}$, all in S. 19, T. 6 N., R. 5 E., B. M., Idaho, containing 520 acres.

Protests or contests against said selection on the ground that said land or any portion thereof is more valuable for mineral lands than for agricultural or any other purpose or for any other cause will be received by the Register and Receiver of the United States Land Office at Boise, Idaho, at any time prior to the expiration of the 30 days required for publication of this notice.

This notice will be posted on the land by W. R. Lake, the duly authorized agent of said Northern Pacific Railway Company, and its Land Commissioner, Thomas Cooper.

Dated Boise, this 8th day of July, 1905.

THE NORTHERN PACIFIC RAILWAY
COMPANY,

By THOMAS COOPER,

Land Commissioner.

Scrip filed April 26/05.

N. P. Land Deal #2.

(Unsurveyed)

Q. Mr. Moon, did you authorize Mr. Chapman or Mr. Steunenberg or anyone else to pay Frank Martin money for legal services for your company?

A. No, sir.

Q. Did you know of any such having been paid to him?

A. No, sir.

Q. Did Governor Steunenberg at the time make any charge against you for any money paid to Frank Martin in any way?

A. No, sir.

(Deposition of S. G. Moon.)

Q. Did you personally solicit or request Nettie Weston, Levy Simpson, Mary Martin, Eleanor A. Phillips to make filing upon any lands in Boise Basin? A. No, sir.

Q. Did you ever know or hear of these people I have named? A. No, sir.

Q. Did you authorize any of your agents or inform any other person to solicit the people named to make timber and stone entries? A. No, sir.

Q. Did you ever have any personal knowledge of the fact that the Barber Lumber Company had acquired from the 4 persons I have named certain lands which had been formerly entered by Anderson, Ball, Hunter, or Wells?

A. Not until the indictment was found against us and proceedings in the indictment were instituted.

Q. I think, Mr. Moon, that the rest of the letters I want to ask about, what few there are, are Mr. Barber's.

[Deposition of James T. Barber, on Behalf of the Defendants (Recalled).]

JAMES T. BARBER, recalled as a witness, testified as follows:

By Mr. BUNDY.—Mr. Barber, do you know a man by the name of N. M. Ruick, formerly United States District Attorney of Idaho?

A. Yes, sir.

Q. I show you a letter page 308 of the copy-book of the company dated January 13-04, and also show you a letter-press copy of letter on page 799 of the same book, dated June 9-06, and ask you if both of

(Deposition of James T. Barber.)

these are letters written by you to Mr. Ruick ?

A. Yes, sir.

Q. And as to whether or not between these dates considerable correspondence was carried on between you acting for the Barber Lumber Company and Mr. Ruick, beginning with the first date and closing with the last ?

A. Some correspondence and personal interview, etc.

Q. And in a general way what was the subject of such correspondence and interview, Mr. Barber ?

A. With reference to the taking over by the company of a survey of the railroad which Mr. Ruick claimed to control, railroad running from Boise over into the Boise Basin and the principal purpose of which railroad was to get into the Basin, there to bring out the timber from that Basin.

Q. These negotiations finally resulted in your company's refusal to go into the railroad business with Mr. Ruick ?

A. The negotiations failed.

Q. At or about the middle of June, 1906 ?

A. Yes, sir.

Q. Mr. Barber, at the time of Governor Steunenberg's death it already appears he was indebted to this company in a considerable amount ?

A. Yes, sir.

Q. Practically 7 or 8 or 9 thousand dollars ?

A. Yes, sir.

Q. Was it discovered that there were a number of items, things, which had been left for final adjustment which entitled Gov. Steunenberg to some cred-

(Deposition of James T. Barber.)

its? A. Yes, sir.

Q. Can you state in a general way Mr. Barber, how settlement was made if you remember with the Steunenberg estate after his death?

A. I don't know that we made any financial settlement with the Steunenberg estate. I was there some time after his death and left orders with Chapman to file our claims against the estate and supposed it had been done. Since have learned it was not.

Q. There was some stock in the name of Governor Steunenberg, \$37,500.00 in his name at the time of his death? A. Yes, sir.

Q. Did Governor Steunenberg pay for that stock or any part of it?

A. No, sir, there was a small payment on it, \$3,750.00.

Q. That being the amount which Governor Steunenberg had invested in lands at the time you bought out Mr. Sweet? A. Yes, sir.

A. Fully paid stock was issued to him as I understand it for that amount a little more, and the balance charged to his personal account?

A. I think so.

Q. What was subsequently done with the 38 shares of stock that stood in his name and was paid for?

A. It was finally purchased, I think, by the company.

Q. And the money paid to the estate?

A. Paid to the estate less what there was owing

(Deposition of James T. Barber.)

on account of stock.

By Mr. GORDAN.—That had nothing to do with the other amount you claim he owed?

A. No.

By Mr. BUNDY.—What was done with the remaining portion of the stock that stood in his name, that was held as collateral?

A. I thought that was what you were talking about; wait a minute it was all purchased by the company.

Q. And the proceeds used to repay you and Mr. Carson and Mr. Moon for the money you had loaned to Steunenberg and for which you held the stock as collateral and the balance turned over to the estate?

A. Yes, sir, Carson and I furnished the money to him to pay for his stock subscription \$37,500.00 less \$3,750.00 which he had already paid when we bought in.

Q. I show you a letter, number 583 taken from the files of the company dated February 9-06, a short time after Governor Steunenberg's death and ask you if that is a letter you received as President of the company on or about that date?

A. Received February 13-06.

Mr. BUNDY.—We offer that letter in evidence. It reads: "Boise, Idaho."

By Mr. GORDAN.—That is objected to as incompetent, irrelevant and immaterial.

(By Mr. BUNDY.)

(Deposition of James T. Barber.)

“February 9-06.

Mr. James T. Barber, President.

Eau Claire, Wis.

Dear Sir:”

(Omitting the first paragraph which does not refer to anything valuable. Last paragraph.)

“In checking over Governor Steunenberg’s account, we find that he has rendered statement and received credit for 229 timber and stone claims at prices varying from \$800.00 to \$1,000.00. Still he has turned over to us 233 titles. His account therefore would seem to be entitled to credit for 4 claims, but we are not sure as to what the amount per claim should be. His statements don’t indicate what claims they were he reported on and received credit for, so that there is no way of determining which one of these four for which he is receiving credit are, nor where they are located. I presume that sometime in the near future the administrator of his estate will wish to take this matter up and possibly we had better have a copy of that part of the contract with him which covers the purchase of these claims.

Yours truly,

L. G. CHAPMAN,
Manager.”

Q. I show you copy of letter found at page 777 of the copy-book of the company and ask you if you wrote that letter and mailed it on or about that date?

A. Yes, sir.

By Mr. BUNDY.—We offer the last paragraph of that letter in evidence.

(Deposition of James T. Barber.)

“Eau Claire, March 6-06.

Mr. L. G. Chapman,
Boise, Idaho.

We are in receipt of a letter today from Mr. Borah in which he says that the administrator of the Steunenberg estate is anxious for a final settlement or adjustment of the Steunenberg interest in this company. I think our books show quite a large indebtedness, some eight or ten thousand dollars standing against Mr. Steunenberg which may possibly be subject to some off-sets. There seems to be a question in the minds of some of us here in regard to 3 or 4 claims which have not been credited to his account, although I don't see how they could well be taken up on our books without some allowance being made to somebody in consideration for them. Please give me all particulars pertaining to this matter of Steunenberg as far as you have them. Kindly give this ledger statement and Steunenberg matter very careful attention.

Yours truly,

JAMES T. BARBER.”

Q. I show you copy of letter found at page 775 of the book of the company; did you write and mail that letter on or about its date? A. Yes, sir.

Q. Addressed to Mr. Wm. Carson at that time vice-president of the company? A. Yes, sir.

By Mr. BUNDY.—We offer that letter in evidence.

(Deposition of James T. Barber.)

“March 5-06.

Mr. Wm. Carson,

Burlington, Iowa.

Dear Sir: I am today in receipt of a letter from Mr. Borah in which he says that Ex Governor Steunenberg's brother has been after him several times for adjustment of the affairs of his deceased brother in connection with this company. My understanding of the situation is that there stands on our books in Boise an indebtedness of some eight or ten thousand dollars against Ex-Governor Steunenberg and for which account he has never rendered any statement. The impression seems to prevail that all or a large portion of this balance was used directly in the interest of the company, although in what way I am unable to state. Mr. Moon agrees with me that we should deal with reasonable liberality in adjusting this matter, but on the other hand Mr. McCartany suggests that we take the position that if the estate will surrender all claims to the stock, you and I now hold against the Governor's notes and transfer the thirty-seven hundred dollars of stock now outstanding and held by the Governor's estate, we would cancel the indebtedness on the books. This seems to me to be a rather cold proposition, if the Governor really spent this money in our interest. I should like to hear from you on this subject and without delay.

Yours truly,

JAMES T. BARBER.”

Q. I show you a letter marked 1211 3-4 taken from the files of the company; did you receive that

(Deposition of James T. Barber.)

letter on or about the time of its date?

A. Yes, on the 9th.

By Mr. BUNDY.—We offer that in evidence.

“Burlington, Iowa, March 7-02.

Mr. James T. Barber,

Eau Claire, Wis.

Dear Sir: I have carefully considered what you have to say relative to a settlement with Governor Steunenberg's estate. I understand there is some eight thousand dollars charged on our books against the Governor for which he has never rendered any account or statement. My impression is the same as your, that the Governor always considered he never received any benefit from this money, and that it was spent in the interest of the Barber Lumber Company. Mr. Rand and I are of the opinion that as liberal a settlement as can properly be made, should be made with the Governor's people. At one time the Governor brought up the question of what would become of his affairs as regards the Barber Lumber Company in case anything should happen to him. I am of the opinion that you were present at that time. I remember that I assured the Governor that I believed he need have no fear that the Barber Lumber Company would not deal fairly and liberally with his people in such a case. It seems to me proper that if the Governor's estate surrender to the company the stock which you and I now hold as collateral for his note, the company should take into consideration the

(Deposition of James T. Barber.)

fact that this stock is of more value than par and the accumulated carrying charges. I would suggest that you make a settlement of this matter, and would say that whatever liberality you see fit to extend to Mrs. Steunenberg and her children will be entirely satisfactory to Mr. Rand and myself.

Yours truly,

WM. CARSON."

Q. I show you copy of a letter found on page 846 of letter-book of the company; is that a copy of a letter written and mailed by you on or about that date?

A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence.

"August 22-06.

Mr. A. K. Steunenberg,
Caldwell, Idaho.

Dear Sir: I have your of the 17th, it became necessary to deliver the stock sold by Messrs. Carson, Moon and myself to the purchasers on the 20th and the transfer was made for the full amount, The purchasers were allowed to take, which was three thousand shares. This delivery was made without taking in the 375 shares originally subscribed for by your brother. The present stockholders will have a meeting in St. Paul on the 28th and at that meeting will take up the question of the disposal of the 375 shares in question. There seems to have been considerable delay in getting word to and from you in regard to the matter of this stock deal, still I have not given up hope of being able to dispose of the stock for the

(Deposition of James T. Barber.)

estate. The prospect is not as good as it would have been had I been in the position to deliver the stock on the 20th. As soon as this meeting is over, I will let you know what action is taken. In the meantime will retain the certificates for 38 shares, pending some action taken at that time. If that is in any way satisfactory to you, kindly let me know.

Yours truly,

JAMES T. BARBER."

Q. I show you another letter on page 851 of the same book; is that a letter, a statement; is that a copy of the statement made with reference to the 375 shares there was of the capital stock of the Barber Lumber Company at the time that was sold by you for the estate of Steunenbergs? A. Yes, sir.

Q. Can you tell from that what price per share you allowed the estate? A. Yes, sir.

Q. How much? A. \$135.00 a share.

Q. That figured up to \$50,625.00?

A. Yes, sir.

Q. And after taking the amount Governor Steunenbergs owed you and Mr. Carson and interest on it, it left due the estate \$7,760.45?

A. Yes, sir.

Q. Which sum was paid to the estate of Steunenbergs? A. Yes, sir.

Q. I show you a letter page 875 of the same book; is that a letter you wrote Mr. A. K. Steunenbergs?

A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence.

(Deposition of James T. Barber.)

“Eau Claire, September 6-06.

Mr. A. K. Steunenberg,
Caldwell, Idaho.

Dear Sir: I am in receipt of assignment of the equity of the estate of Frank Steunenberg in the 337 shares of stock of the Barber Lumber Company held as collateral by Mr. Carson, S. G. Moon and writer. And in accordance with my letter and statement of the 30th, I herewith enclose Northwestern Lumber Company's check for \$7,760.45 (seven thousand seven hundred sixty dollars and forty five cents) also three notes dated Caldwell, Idaho. July 16-02 for \$12,500.00 each, payable on or before seven years with interest at six per cent. These notes being stamped paid as today.

JAMES T. BARBER.”

Recess taken to 2 P. M. of this day.

2 o'clock P. M., examination resumed.

JAMES T. BARBER, recalled as a witness, testified as follows:

By Mr. BUNDY.—Mr. Barber, what if any other services did Mr. Steunenberg perform out there for the Barber Lumber Company which were not included under his contract, relative to Basin lands?

A. Why, he acted for the company in the purchase of the Crooked River lands and millsite and in other little matters that we had to attend to out there before the company was represented by a regular officer.

Q. And had more or less to do with the negotiations with reference to purchase of state lands?

(Deposition of James T. Barber.)

A. Quite a good deal.

Q. With reference to building dam and getting surveys made for it? A. Yes, sir.

Q. Devoted more or less time there to the company's business there? A. Yes, sir.

Q. I show you a letter found at page 414 of the copy-book and ask you if that is a letter you sent to Mr. Chapman, about its date? A. Yes, sir.

Q. I call your attention to the 3rd paragraph of that letter? A. Yes, sir.

Q. Does that letter refresh your recollection in regard to any arrangements made with Mr. Steunenberg in regard to salary?

A. When Mr. Carson and I were in Boise about that time we made arrangements with Mr. Steunenberg to pay him a salary of \$70.00 a month and to date back something like a year or a year and a half, I have forgotten how long.

By Mr. BUNDY.—We offer that part of that letter.

“Eau Claire, August, 31-04.

Mr. L. G. Chapman,

Boise.

Dear Sir: When we were in Boise, Mr. Carson agreed with Mr. Steunenberg to pay him a salary of \$70.00 a month from the time we had a talk with him some a year and a half ago up to the time of our visit. We desired to settle with Mr. Steunenberg on this basis and it becomes necessary for you to ascertain from him just when he considered he came into our employ under salary.

(Deposition of James T. Barber.)

The continuation of his connection as a salaried man with the company is left with you entirely he being willing to continue at the same basis of wages."

Q. After Governor Steunenberg's death it was found that he had not been credited with any salary?

A. Yes, sir.

Q. And that in addition to discovery that certain titles had been turned over by him for which no credit had been given him and various other matters left his open account larger than you gentlemen in reality thought it ought to be?

A. Yes, sir.

(By Mr. GORDON.)

Q. Does it appear affirmatively in this record from Mr. Barber or Mr. Moon that they did not acquire any of the state lands?

By Mr. BUNDY.—It does, Chapman's evidence.

By Mr. BUNDY.—Did you ever acquire any lands in the State of Idaho?

A. No, sir.

By Mr. BUNDY.—At the time the account of Governor Steunenberg was closed at this office showing eight thousand dollars against him and transfer to the Boise office upon which you paid something like seven thousand dollars, do you know how that stands now?

A. I think it stand to his debit on the books of the company.

By Mr. GORDAN.—How much?

A. Some seven or eight thousand dollars, I can't tell you.

Q. Did you ever adjust 6-4 claims?

A. No.

(Deposition of James T. Barber.)

Q. Do you know whether or not the eight or ten thousand dollars you spoke of as being owing by Steunenberg to the Barber Lumber Company in this amount that he claims now, was there a re-adjustment or didn't they have any adjustment whatever with Steunenberg?

A. I don't think any credit whatever was given him for any services or claim.

Q. When that adjustment was made it may be \$3,000.00 or \$2500.00 less than that?

A. Yes, sir.

By Mr. BUNDY.—They don't know how much less?

A. It may be \$4,000.00 (four thousand) you couldn't tell exactly.

By Mr. BUNDY.—Mr. Barber, the deal was made with his estate for the stock without taking into consideration the open account at all? A. Yes, sir.

Q. I ask you in a general way Mr. Barber, to state what trouble you had if any; what services Governor Steunenberg rendered in the matter of getting lands upon which to build your plant; in a general way?

A. Four or five parties that owned the property that we had determined that it was absolutely necessary for us to secure for the lumber plant with all of us including the Governor devoted a good deal of time to the inspection of Boise river from where it came out of the canyon five or 6 miles above Boise to several miles below Boise and this particular location was the only one which seemed to us available for a millsite, and having no other place in view it

(Deposition of James T. Barber.)

became necessary to secure that one with a great deal of caution because we had to deal with four or five different people and they were all imbued with the idea that some large lumber operations were going to be carried on in that vicinity. And Steunenberg had a great deal of trouble in getting an option; that was the only way we could get there. We would not buy a piece outright until we knew we could get the other piece and there was an endless amount of correspondence in connection with it.

Q. These negotiations began in the latter part of 1902? A. I think so.

Q. I show you a letter, page 36 of the company copy-book and ask you if that is a letter you wrote Mr. Steunenberg with reference to acquiring millsite on December 12-02? A. Yes, sir.

Q. And did you in that letter direct Mr. Steunenberg to take option under a certain form you sent him? A. Yes, sir.

Q. Did you direct that such options be taken in the name of A. E. Palmer? A. Yes, sir.

Q. Now, that land was not land based upon timber and stone entries but cultivated ranches?

A. Cultivated ranches and sage-brush lands mostly.

Q. And you directed him to take them in the name of A. E. Palmer there for what reason?

A. To divert attention from the fact that we were planning to put in a sawmill there and operate largely in timber.

Q. Was the same reason for taking the mill prop-

(Deposition of James T. Barber.)

erty in that way as existed for buying the timber and other property? A. Yes, sir.

Q. Those options were ultimately taken in the name of Mr. Rand? A. Yes, sir.

Q. Do you know why that was?

A. I think it was because Mr. Palmer had ceased to be connected in any business way with the company and left the country.

By Mr. GORDAN.—Were the options taken in Rand's name or title?

By Mr. BUNDY.—The options were taken in Rand's name but when the deeds were taken they were taken in their name.

By Mr. GORDAN.—How many acres are included in the millsite property?

A. Approximately 1000 acres, you can tell there by figuring it up exactly.

Q. I show you copy of a letter on page 165 of the letter-book; you wrote and mailed that to Governor Steunenberg at or about that time?

A. Yes, sir.

By Mr. BUNDY.—That is offered in evidence.

“Eau Claire, June 22, 03.

Hon. Frank Steunenberg,

Boise, Idaho.

Dear Sir: I have your letter of the 17th and in reply will say that I find it will be impossible for me to reach Boise before the expiration of the options you now hold on the millsite. As previously advised you will close these options before purchasing the property before their expiration. We will have fifty

(Deposition of James T. Barber.)

thousand dollars sent to the First National Bank at Boise subject to your order for these purposes. Have Mr. Borah pass on all titles and don't take any chances whatever in the way of defects. The price we pay entitle us to an absolutely perfect change of title.

Yours very truly,
JAMES T. BARBER."

Q. That fifty thousand dollars was sent to his credit? A. Yes, sir.

Q. And charged to Mr. Steunenberg on his account? A. Yes, sir, I think so.

Q. Now, Mr. Barber, in the early part of the summer of 1903 after you had acquired your millsite you filed your articles in the State of Idaho and from that day on, existence of the fact of the Barber Lumber Company doing business there was generally known, was it not, so far as the fact of the Barber Lumber Company being interested in that country? There was no further efforts made to conceal it; I don't know as I give you the date right, but after it did become known, then after that all lands that were bought were taken in the name of the Barber Lumber Company? A. Yes, sir.

Q. And some taken in the Basin that had not been previously acquired?

A. Yes, sir, quite a number.

Q. And that applied in localities where you had previously been buying?

A. Yes, sir, I think in all localities.

Q. It didn't apply up in 6-4?

No answer.

(Deposition of James T. Barber.)

Q. I show you a telegram number 234; did you receive that telegram from Governor Steunenberg after Palmer had left the country?

A. Yes, sir.

By Mr. BUNDY.—I offer that telegram in evidence.

“Boise, Idaho, June 19-03.

James T. Barber, Eau Claire, Wis.

Shall I take deeds in name of Barber Lumber Company?

FRANK STEUNENBERG.”

Q. Did you answer that message by the one found on page 162 of the copy-book, next day?

A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence, it reads:

“Eau Claire, Wis. June 20-03.

Hon. Frank Steunenberg,

Boise, Idaho.

Yes.

JAMES T. BARBER. President.”

Q. Do you recall Mr. Barber, what deeds was referred to in that telegram in what particular lands or in what locality?

A. I couldn't carry those things.

Q. The reason I am asking is that subsequent to that, this was in June 1903, subsequent to that you bought these 6-4 lands and took title in name of George S. Long where you had not operated before, now in June 1903 in directing Steunenberg to take deeds in the name of the Barber Lumber Company,

(Deposition of James T. Barber.)

I want you to explain the apparent discrepancy?

A. Where we had already obtained quite a large amount of land there was no object in covering up the fact that the Barber Lumber Company was buying additional timber holdings, and the 6-4 titles were purchased I think I said in my previous evidence that we didn't desire to have it known that the Barber Lumber Company was buying these titles for the reason as I said it would certainly enhance the value placed upon them by the entrymen.

Q. You had not operated in 6-4 at all up to that time? A. No, sir.

Q. And were still trying to buy lands which belonged to the state of Idaho in that same town?

A. Yes, in that same town.

Q. Here is a letter addressed to Mr. Moon, I don't know whether it refreshes your recollection. Number 65½ and the way it commences taking deeds in Palmer's name, it seems Steunenberg started that himself; do you recollect anything from that letter?

A. I don't believe I do. It was written to Mr. Moon.

Q. It is taken from the files of the company and reads:

“Spokane, Wash., May 2-1902.

S. G. Moon, Esq.

Eau Claire, Wis.

Dear John: Herewith I hand you copy of letter from Steunenberg which explains itself. Have made draft on you today for \$250.00 mentioned in the enclosed letter and exchange \$.25. Have just tele-

(Deposition of James T. Barber.)

phoned Steunenberg to send me a copy, properly signed of the contract, which I will forward to you at once. You mentioned once before not having received this contract, but as I had mailed it I felt same had reached you before I had received your letter, otherwise would have taken the matter up before. I have instructed Steunenberg to send me the final receipt issued to John J. Keene, also deed from Keene and his wife to me, both of which I will mail you promptly with the deed from myself to you and Mr. Barber. The Governor had no instructions whatever to have any deed issued in my name. They are so afraid of opposition that I presume didn't care to have your name or Mr. Barber's appear on the record. There is no question in my mind but that Charles Weyerhouser and Deary are anxious to acquire the Peyette land. Am afraid it will get away from us unless I hear from you soon.

Yours truly,

A. E. PALMER."

Q. What did you or do you understand was meant there by being afraid of opposition?

A. Other parties were attempting to purchase the lands and hence run prices up.

Q. Mr. Barber, at or about the time you began the erection of your plant at Boise, did you have some negotiations extending over a considerable period of time with the Government Forestry Department with reference to exchange of timber? A. Yes, sir.

Q. State in a general way what these were?

A. Nearly the whole timbered section of Idaho in

(Deposition of James T. Barber.)

which we were operating was proclaimed a timber reserve which of course stopped further transaction in the way of timber and stone entries, laying a scrip and that sort of thing. In some trip to Washington or somewhere else we became acquainted with Mr. Pinchoot who expressed a desire to in some way include within the reserve, the land owned by the company. We began negotiating some kind of an arrangement or contract, whereby this could be accomplished. Mr. Pinchoot met me in Boise and we visited the Boise Basin looking over the lands in a general way as well as we could from roads and trails.

By Mr. GORDON.—When was this, about what time? A. I can't remember those dates.

By Mr. GORDON.—Go ahead then.

A. My impression was that it was in 1903, I think that these negotiations began in 1903. We viewed the land with the idea of its availability for reforesting purposes. We negotiated the details of an agreement whereby the Barber Lumber Company was to log or cut the timber on the lands owned by them within the then defined Forest Reserve. According to laws, rules laid down by the Forestry Department we were to leave all trees less than eight inches in diameter at the base, and all bushy large trees which were great cone bearers for seed purposes. We were to take care of all the limbs by burning, and when we had finished our operations on the land from time to time, we were to deed it back to the United States. In return for this the United

(Deposition of James T. Barber.)

States or the Forestry Department was to give us a certain amount of what they called ripe timber.

Timber which had reached its growth, reached its maturity which should be logged and utilized in order to secure the best results. These negotiations were pending when this action was commenced and were, of course, at once declared off, the United States declining to negotiate or trade with anybody who was on the property.

Q. Now, Mr. Barber, I want to ask you some general questions, maybe I have asked them before; I want them to go into the record where we can find it.

At the time you made your arrangement with Governor Steunenberg at Eau Claire here, and at the time the deal was closed by Mr. Palmer at Boise on April 10-02, were you wired or had you been advised by anyone to the effect that Mr. Sweet or Mr. Steunenberg or either of them had been advancing money to timber and stone claimants with which to make final proof? A. No, sir.

Q. At that time did you know or were you advised of the fact that the Government had not issued final receipts and receiver's certificates on the lands on which final proof had been made? A. No, sir.

Q. At either of these times did you have any knowledge or notice and were you advised that either Governor Steunenberg or Mr. Sweet had not acquired actual title to lands? A. No, sir.

Q. At the time of making that investment and agreement state whether or not you were informed and believed that Mr. Steunenberg and Mr. Sweet

(Deposition of James T. Barber.)

had purchased lands as they represented to you that they had?

A. I fully believe that they had purchased the lands as represented.

Q. Did you authorize Steunenberg, Palmer or any other person in behalf of you or Mr. Moon to solicit or induce any man or woman to exercise their rights under the timber or stone claims?

A. No, sir.

Q. Did you do it yourself? A. No, sir.

Q. Did you authorize Palmer, Steunenberg or any other person to use your money or Mr. Moon's money or the money of the Barber Lumber Company with which to make advances for final proofs or otherwise? A. No, sir.

Q. Did you authorize such advancement to timber and stone entrymen for the purpose of covering any expenses? A. No, sir.

Q. Was any of your money advanced to timber and stone claimants with your knowledge or with your consent? A. No, sir.

Q. Did you enter into any agreement with Mr. Moon, Wm. Sweet, John Kinkaid, Louis Pritchard, Patrick Downs, Albert Palmer, Horace S. Rand, George S. Long, John I. Wells, Frank Steunenberg or any or either of them having for this purpose the inducing of people to enter timber and stone claims and thereafter turning them over to you or some company you got organized? A. No sir.

Q. Were you at any time, directly or indirectly, and had you any agreement, understanding or ar-

(Deposition of James T. Barber.)

arrangement by which people were to be induced to enter timber and stone claims for your benefit or the benefit of the Barber Lumber Company and thereafter, turning the title from them to you or your company? A. No, sir.

Q. Were you ever requested by Governor Steunenberg to reimburse him for moneys he spent in employing counsel in the contested cases of Arthur Anderson, Nugent, Ball, Hunter or Wells?

A. No, sir.

Q. Was any of your money or of the company's money ever spent with your knowledge or consent or authority for such purpose? A. No, sir.

Q. Was any land acquired by you or Mr. Moon, or the Barber Lumber Company in the State of Idaho in violation of the timber and stone law with your knowledge or consent? A. No, sir.

Q. Were you at any time, Mr. Barber, familiar with the accounting of the Barber Lumber Company or its bookkeeping?

A. No, sir, the matter was left to Mr. Cotton almost entirely.

Q. At the time Governor Steunenberg came here in July-04 and made continuation of previous reports he had made; did you go over with him the items personally?

A. I don't think so; no, sir.

Q. Have you any recollection of having called to your attention any charge for any contested cases?

A. No, sir.

Q. Did he at any time tell you of the fact he had

(Deposition of James T. Barber.)

contested cases that I have mentioned, that is for Wells, et al.? A. No, sir.

Q. Did you ever hear of these cases or appeals taken until the indictment served upon you by the United States? A. No, sir.

Q. I think that is all Mr. Barber for the present, I may want to call you for one or two things later on.

Q. Did you know anything about the relations between Governor Steunenberg and Mr. Sweet after you had bought out Sweet's interest?

A. Nothing definite at all; Mr. Sweet I think wrote a letter to me.

Q. Do you know whether it was a long time after that?

A. A long time after that; I knew nothing about it at all.

Q. Did you know anything about some controversy between him and Governor Steunenberg in regard to certain moneys it was claimed Steunenberg held of Sweet? A. No.

Q. Do you know anything of the manner in which they settled their controversy? A. No, sir.

That is all, Mr. Barber.

[Deposition of S. G. Moon, on Behalf of the Defendants (Recalled).]

S. G. MOON, recalled as a witness, testified as follows:

By Mr. BUNDY.—At the time Governor Steunenberg made his arrangements with you at Eau Claire in March, 1902, and at the time that contract was consummated and closed by Palmer at Boise on

(Deposition of S. G. Moon.)

April 10-02, did you know of the fact or had you been advised of the fact that Steunenberg and Sweet or either of them had been advancing money to entrymen and entrywomen for the purpose of making final proofs on timber and stone claims?

A. No, sir.

Q. Did you know at that time that final receipts had been issued on the final proofs which had been made at the Boise land office? A. No, sir.

Q. Did you know at that time or had you been advised in any manner that Mr. Steunenberg and Sweet had not in fact acquired title to any lands?

A. No, sir.

Q. Would you have made the investment you made had you known the titles they had were based upon temporary receipt? A. No, sir.

Q. Did you at any time, personally or as an officer of the Barber Lumber Company, induce or request or solicit any man or woman to make an entry under the Timber and Stone Act in the State of Idaho? A. No, sir.

Q. Did you authorize any person to solicit or induce or request any man or woman to make such entries? A. No, sir.

Q. Did you authorize any person or agent of the Barber Lumber Company to advance money to any person for the purpose of procuring land from the United States by means of the Timber and Stone Act? A. No, sir.

Q. Did you know and do you know now of any of your money or Mr. Barber's money or the Barber

(Deposition of S. G. Moon.)

Lumber Company's money having been so used?

A. No, sir.

Q. Were you at any time requested by Governor Steunenberg to reimburse him for any moneys which he had paid to attorneys or other expenses alleged to have been incurred in defending certain contests against claims of Anderson, Ball, Nugent, Hunter, Wells?

A. No, sir.

Q. Did you know anything about such contested cases or appeals taken therefrom prior to the time the indictment was served upon you in this State a year or two ago?

A. No, sir.

Q. Were you at any time a party to an agreement between yourself, James T. Barber, Wm. Sweet, John Kinkaid, Louis M. Pritchard, Patrick Downs, A. E. Palmer, Horace S. Rand, George S. Long, John I. Wells and Frank Steunenberg or either or any of them which had for its object the inducing of people to exercise their rights under the Timber and Stone Act with the view to turning the title over to you or the company when the same was acquired?

A. No, sir.

Q. Did you ever hear or know of any such agreement?

A. No, sir.

Q. Between yourself or any of the other parties?

A. No, sir.

Q. Did you know or do you know now of any lands having been procured by yourself, Mr. Barber or the Barber Lumber Company in the State of Idaho in violation of the Timber and Stone Act?

A. No, sir.

(Deposition of S. G. Moon.)

Q. Mr. Moon, you are secretary of the Barber Lumber Company, are you not? A. Yes, sir.

Q. And have been since it was organized?

A. Yes, sir.

Q. And have you with you here the corporate records of the company? A. Yes, sir.

Q. Will you state when that company was organized and who the incorporators were?

A. It was organized July 9-02.

Q. And who were the incorporators?

A. C. W. Lockwood, J. T. Barber and S. G. Moon.

Q. And what was the original capital stock of the company?

A. One hundred and fifty thousand dollars.

Q. And who were the original subscribers?

A. James T. Barber, 475 shares, C. W. Lockwood, 549 shares; W. Carson, one share; C. D. Moon, 130 shares; S. G. Moon, 345 shares.

Q. At the first meeting of the stockholders of the Barber Lumber Company state as to whether or not a resolution was adopted relative to the contract which you and Mr. Barber had made with Governor Steunenberg and which contract has been offered in evidence? And is the contract set forth in full in the minutes of that meeting? A. Yes, sir.

Q. And the resolution after reciting the making of the contract and setting it forth in full is as follows:

“Now, therefore, be it resolved that this corporation does hereby assume to carry out the provisions of said contract in so far as they apply and are obli-

(Deposition of S. G. Moon.)

gatory upon said James T. Barber and S. G. Moon.

And be it further resolved, that the directors and officers of this corporation are hereby authorized and instructed to ascertain the amount of money actually expended by said Barber and Moon in carrying out the provisions of said contract, and refund and pay over to said Barber and Moon such amount upon the transfer of said corporation of such titles as they may have to all lands acquired by them under the provisions of said contract and to pay interest on the said amount from date of payment until date of such repayment at the rate of five per cent per annum.

And be it further resolved that such expenditures as may have been incurred and not paid by said Barber and Moon and such money obligations as they may have assumed and agreed to pay in accordance with the provisions of said contract shall be assumed and paid by this corporation."

I have correctly read the resolving part of the resolution? A. Yes, sir.

Q. Was that resolution complied with by the officers and directors of the company?

A. Yes, sir.

Q. And was the amount of money which you and Mr. Barber had invested in procuring lands in the State of Idaho repaid to you by the Barber Lumber Company with five per cent interest as indicated by that resolution? A. Yes, sir.

Q. And can you tell on what date that payment was made or credit given to you, Mr. Moon, and Mr. Barber by looking at the books of Mr. Moon?

(Deposition of S. G. Moon.)

A. Yes, sir, on July 23-02.

Q. And what was the amount of that payment?

A. That was \$68,853.99 (sixty-eight thousand, eight hundred fifty-three dollars and ninety-nine cents).

Q. Now, Mr. Moon, the capital stock of the company has been increased from time to time to meet the demand caused by the expansion of business, has it not?

A. Yes, sir.

Q. Have you produced here the stock certificate-book showing the person to which each certificate has been issued since the formation of the company?

A. Yes, sir.

Q. And what certificates have been cancelled?

A. Yes, sir.

Q. Have you prepared at my request a statement showing the number of each certificate, the date, to who issued, the number of shares, and when the same had been cancelled, and date of cancellation, from the organization of the company down to date?

A. Yes, sir.

Q. And that is the paper I show you, is it?

A. Yes, sir.

Q. Paper marked Defendant's Exhibit "B" is a true and correct statement of the issue of the various certificates as stated, is it not?

A. Yes.

Q. I show you paper Defendant's Exhibit "C"; is that a statement which you have prepared from the stock certificate-book of the company showing the names of the present stockholders and number of shares held by each?

A. Yes, sir.

(Deposition of S. G. Moon.)

Q. Being the total number of shares now outstanding 13,955? A. Yes, sir.

Q. Of the par value of \$1,395,500.00?

A. Yes, sir.

Q. And that amount has been actually paid in and invested in the affairs of the company?

A. Yes, sir.

Q. And in addition to that there has been another increase of the capital stock which has been partly subscribed, and a certain part of that subscription paid? A. Yes, sir.

Q. And has that been subscribed by the same stockholders on this Exhibit C or any new ones?

A. There are no new ones that I remember of. The subscription list is in the record-book.

Q. See if these subscriptions were the same stockholders?

A. Yes, there are no new stockholders, except what are shown on this exhibit "C."

By Mr. BUNDY.—We offer exhibit "C" in evidence. I also offer exhibit "B" in evidence too. That is all, Mr. Moon.

Defendant's Exhibit "B."**BARBER LUMBER STOCK.**

Certificate Number.	Date.		Number of Shares.	
1	Dec. 17th, '02.	James T. Barber	330	Cancelled Aug. 20th, '06.
2	"	Joseph G. Dudley	50	
3	"	C. D. Moon	130	
4	"	A. E. Macartney	50	
5	"	William Carson	1	
6	"	H. S. Rand	50	
7	"	Frank Steunenbergs....	125	Cancelled Nov. 8th, '04.
8	"	do	125	Cancelled Nov. 8th, '04.
9	"	do	125	Cancelled June 2d, '03.
10	"	C. W. Lockwood	100	
11	"	do	100	
12	"	do	100	
13	"	do	64	
14	"	L. G. Chapman	30	Cancelled Mch. 2d, '09.
15	"	S. G. Moon	120	
16	June 2d, '03.	William Carson	125	Cancelled Sept. 12th, '06.
17	Nov. 8th, '04.	James T. Barber	104	Cancelled "
18	"	Frank Steunenbergs....	19	Cancelled "
19	"	S. G. Moon	104	Cancelled "
20	"	Frank Steunenbergs....	19	Cancelled "
21	"	S. G. Moon	2	Cancelled "
22	"	James T. Barber	2	Cancelled "
23	Jan. 7th, '05.	James T. Barber	670	Cancelled Aug. 20th, '06
24	"	C. W. Lockwood	1456	
25	"	William Carson	4	
26	"	H. S. Rand	200	
27	"	A. E. Macartney	200	Cancelled Mch. 2d, '05.
28	"	C. D. Moon	470	
29	"	J. A. Smith	50	
30	"	L. G. Chapman	20	Cancelled Mch. 2d, '05.
31	"	Sallie F. Moon	500	Cancelled July 18th, '06.
32	"	G. D. Hoseley	50	Cancelled June 1st, '05.
33	"	C. A. Chamberlain	150	
34	"	S. G. Moon	730	Cancelled Aug. 11th, '06.
35	Mch. 22d, '05.	A. E. Macartney	100	Cancelled Aug. 20th, '06.
36	"	do	50	Cancelled Aug. 20th, '06.
37	"	do	50	
38	June 1st, '05.	Sallie F. Moon	50	Cancelled July 18th, '06.
39	Dec. 21st, '05.	James T. Barber	660	Cancelled Aug. 11th, '06.
40	"	C. W. Lockwood	1213	Cancelled Aug. 16th, '06.
41	"	William Carson	3	
42	"	A. E. Macartney	166	Cancelled July 11th, '06.
43	"	H. S. Rand	166	
44	"	C. D. Moon	400	Cancelled Oct. 1st, '06.

BARBER LUMBER CO. STOCK (2).

Certificate Number.	Date.		Number of Shares.	
45	Dec. 21st, '05.	James A. Smith	33	
46	"	L. G. Chapman	33	Cancelled Mch. 2, '09.
47	"	Joseph G. Dudley	33	
48	"	Sallie F. Moon	333	Cancelled July 18, '06.
49	"	C. A. Chamberlin	100	
50	"	S. G. Moon	566	Cancelled Aug. 31, '06.
51	Jan. 11th, '06.	A. E. Macartney	100	Cancelled Aug. 20, '06.
52	"	do	36	Cancelled Aug. 20, '06.
53	"	do	30	Cancelled Aug. 20, '06.
54	Jan. 18th, '06.	L. G. Chapman	167	Cancelled Mch. 2, '09.
55	May 4th, '06.	C. F. Davis	50	Cancelled Sep. 20, '06.
56	July 18th, '06.	Sallie F. Moon Co.	883	Cancelled Aug. 31, '06.
57	Aug. 11th, '06.	S. G. Moon	416	Cancelled Aug. 20, '06.
58	"	do	314	
59	"	James T. Barber	650	Cancelled Aug. 20, '06.
60	"	do	16	
61	Aug. 16th, '06.	C. W. Lockwood	618	Cancelled Aug. 20, '06.
62	"	do	595	
63	Aug. 20th, '06.	F. S. Bell	1	
64	"	William H. Laird Co..	499	
65	"	Mathew G. Norton Co..	500	
66	"	F. H. Thatcher	1	
67	"	Pine Land Co.....	499	
68	"	J. P. Weyerhauser....	750	
69	"	G. A. Weyerhauser....	1	
70	"	R. M. Weyerhauser....	1	
71	"	F. E. Weyerhauser....	1	
72	"	F. Weyerhauser	747	Cancelled May 13th, '07.
73	"	Not issued.		
74	Aug. 31st, '06.	James T. Barber... ..	64	
75	"	Sallie F. Moon Co....	819	Cancelled Sept. 27th, '06.
76	"	S. G. Moon	180	
77	"	do	186	
78	"	do	200	
79	Sept. 27th, '06.	C. W. Lockwood	50	
80	"	Angeline M. Dudley...	210	
81	"	D. R. Moon	300	
82	"	Sallie F. Moon Co....	309	
83	Oct. 1st, '06.	C. D. Moon.....	200	
84	"	do	200	
85	Nov. 24th, '06.	James T. Barber	40	
86	"	Joseph G. Dudley	41	
87	"	Sallie F. Moon Co....	409	Cancelled Nov. 28, '06.
88	"	S. G. Moon	500	

BARBER LUMBER CO. STOCK (3)

Certificate Number.	Date.		Number of Shares.	
89	Nov. 24th, '06.	L. G. Chapman	125	Cancelled Mch. 2, '09.
90	"	Wm. H. Laird Co.	250	
91	"	Matthew G. Norton Co. 250		
92	"	Pine Land Co.....	250	
93	"	J. P. Weyerhauser	375	
94	"	F. Weyerhauser	375	Cancelled May 13, '07.
95	"	A. E. Macartney	25	
96	"	do	25	
97	"	C. D. Moon	500	
98	"	C. W. Lockwood	1207	
99	"	William Carson	4	
100	"	C. F. Davis	25	Cancelled Nov. 28, '06.
101	"	Horace S. Rand	208	
102	"	J. A. Smith	42	
103	"	C. A. Chamberlin	125	
104	Nov. 28, '06.	Pauline M. Haueisen..	100	
105	"	Sallie F. Moon Co.	309	
106	"	C. W. Lockwood	25	
107	May 13th, '07.	F. Weyerhauser Co. ...	1122	

Defendant's Exhibit "C."

OUTSTANDING STOCK OF BARBER LUMBER CO., May 1st, 1909.

Joseph C. Dudley	124	shares
C. D. Moon	1500	"
A. E. Macartney	150	"
William Carson	12	"
H. S. Rand	624	"
C. W. Lockwood	3697	"
S. G. Moon	1500	"
Jas. A. Smith	125	"
C. A. Chamberlain	375	"
F. S. Bell	1	"
Wm. H. Laird Co.....	749	"
Matthew G. Norton Co.....	750	"
F. H. Thatcher	1	"
Pine Land Co.....	749	"

J. P. Weyerhauser Co.....	1125	“
C. A. Weyerhauser	1	“
R. M. Weyerhauser	1	“
F. E. Weyerhauser	1	“
F. Weyerhauser Co.....	1122	“
James T. Barber	120	“
Angeline M. Dudley	210	“
D. R. Moon	300	“
Sallie F. Moon Company.....	618	“
Pauline M. Haueisen.....	100	“

Total, 13955 shares

[Deposition of F. H. L. Cotten, on Behalf of the Defendants.]

F. H. L. COTTEN, being first duly sworn on oath, testified as follows:

By Mr. BUNDY.—Mr. Cotten, you live in this city, do you not? A. Yes, sir.

Q. How long have you lived here?

A. A little more than twenty-nine years.

Q. And are cashier of the Northwestern Lumber Company? A. Yes, sir.

Q. And have general charge of the defendant's accounting department? A. Yes, sir.

Q. And of its office forces? A. Yes.

Q. And have had such charge of how long?

A. Nearly 28 years; have been in the office all the time and in charge about 28.

Q. Do you remember the time when Mr. Barber and Mr. Moon began making investments in the State of Idaho? A. Yes, sir.

(Deposition of F. H. L. Cotten.)

Q. The money used in that investment was paid by the Northwestern Lumber Company and charged to Mr. Barber and Mr. Moon?

A. Yes, sir, at first.

Q. And that account of Barber and Moon was kept on what books at first?

A. Northwestern Lumber Company's.

Q. And was that account simply a record of money sent there and incidental expenses paid by the Northwestern Lumber Company in connection with their Idaho investments? A. Yes, sir.

Q. Nothing appeared on the credit side of that account? A. I think not.

Q. At some time after the organization, or about the time of the organization of the company was there a set of books started at Eau Claire for the Barber Lumber Company?

A. Yes, some little time, I think, after.

Q. I show you here on my desk these three volumes, Journal A, Cash A, and Ledger A; are these the books of the Barber Lumber Company started here at Eau Claire? A. Yes, sir; they are.

Q. And were these books opened and started under your direction? A. They were.

Q. You may state the date on which they were opened? A. May 20-04.

Q. Now, Mr. Cotten, does that indicate the date of the first transaction recorded in the books, or is that the date when this set of books were originally opened?

A. It was when they were written up.

(Deposition of F. H. L. Cotten.)

Q. The records, transactions, began with the beginning of the business?

A. Beginning of the business.

Q. And does it include in these books, correctly transcribed, a history of the proceedings had before the corporation was formed? A. Yes, sir.

Q. And includes in it all of the money, and accounts for all of the money paid to the Northwestern Lumber Company and originally charged to Barber and Moon? A. Yes, sir.

Q. And when it was paid back to Barber and Moon by the Barber Lumber Company it was credited to Barber and Moon on the books of the Barber Lumber Company on page one, I think that is the account; I think there was nothing paid back until this account was transferred to the Barber Lumber Company. When it was paid it was credited to the Barber Lumber Company on this account.

Q. So these three books shown you cover all entries, business of Barber and Moon in Idaho, and of the Barber Lumber Company from the time of its organization until the accounts were transferred to its office in Boise, Idaho? A. Yes, sir.

Q. When was it transferred to the Boise office in Idaho, this account?

A. That was in December 19-1904.

Q. Now, will you state what accounts were transferred to the Boise office on that date, giving the balance of each account as you transferred it?

A. Well, there is Frank Steunenber, \$6,710.50.

G. D. Hosely, \$479.00

(Deposition of F. H. L. Cotten.)

Mill property, \$49,471.50.

Northern Pacific land deal, \$5,000.00.

Land account, \$215,144.00

Land expenses, \$6,991.05.

Caston ranch, \$216.62.

Livestock, \$534.00.

Stumpage, \$1,465.88.

Taxes, \$2,869.16.

Personal property, \$22.85.

Expense account, \$2,127.19.

Attorney's fees, \$3,200.00.

Q. Now, at the time of the transfer, Mr. Cotten, you sent out to the Boise office a complete transfer of the accounts which show the balances you have read?

A. I think there was an itemized statement of everything.

Q. So that the Boise office in starting from the statements you took off these books and kept here at Eau Claire, would be as to those accounts an exact transcript of the books here?

A. Yes, sir; they had an exact transcript.

Q. So that these books, Barber Lumber Company's books, here at Eau Claire, which are shown you, do not contain anything relative to the accounts you have read which were transferred, which does not appear on the Boise books?

A. No, sir; nothing that I know of.

Q. And the Boise books would not contain anything relating to these accounts prior to December, 1904, which these books contain?

(Deposition of F. H. L. Cotten.)

A. No, sir; I think not.

Q. The Boise office Mr. Cotten, contains it all?

A. Of course, I never saw the Boise books in the first place before the Barber Lumber Company was organized; all the money advanced was charged to Barber and Moon on the Northwestern Company's books, and then later when the Barber Lumber Company was organized the balance of this Barber and Moon account was transferred to the Barber Lumber Company, and the further advances were charged to the Barber Lumber Company. Now, these two accounts were the only ones on the Northwestern Lumber Company's books in regard to the Barber Lumber Company's business. Later on when we opened these books, the Barber Lumber Company's books, we discontinued the home office books. The itemized statement of these two accounts and entries on these books made from the statement in detail kept on the Barber Lumber Company's books, is a proper explanation of entries as they were made?

Q. Then the books that are presented here are the home office books; were written up in May 20, 1904?

A. Yes, sir.

Q. And they went back to the beginning of the first dollar invested?

A. Yes, sir.

Q. And contain a complete transcript of every dollar invested and show where it went to up to the time that these accounts were closed out or some of the accounts were closed out and transferred to the Boise office in December, 1904?

A. Yes, sir.

(Deposition of F. H. L. Cotten.)

Q. At the time you sent out to Boise to open up the Boise books you sent a detailed statement of accounts transferred as it appeared on the home office books up to that time, namely December 19-04, that is a statement of the account transferred?

A. Yes, sir.

Q. You have read into the record the accounts that were transferred out with it at that time?

A. Yes, sir.

Q. Now, what accounts were not transferred, but were retained and kept on the home office books?

A. There was the stock accounts and subscription accounts, subscription for stock and then of course, expense account was transferred out there, but naturally there was some expense here, attorney's fees, but only a few accounts kept here. I think one of the various accounts was with the Oregon Short Line Railroad there.

Q. The first credit found on the account of Frank Steunenberg for \$61,605.50 (sixty-one thousand six hundred and five dollars and fifty cents) was made from the statement rendered and signed by Mr. Steunenberg and which you hold in your hand and which is marked and introduced in evidence here as number 279, is it not?

A. Yes, sir.

Q. And the total amount of credits claimed on this item was \$83,560.00, was it not?

A. Yes, sir.

Q. And the credit given him was that amount less 50 cents error in computation and less \$21,950.00 Sweet's investment which was not charged to Steu-

(Deposition of F. H. L. Cotten.)

nenberg? A. Yes, sir.

Q. Now, this second credit appearing on the account of Frank Steunenberg is for \$84,508.04; I will ask you Mr. Cotten if that credit was given him based upon statement rendered by Governor Steunenberg, dated July 7-03? A. Yes, sir.

Q. And was offered in evidence marked 280?

A. Yes, sir.

Q. So he was credited for the amount shown by his statement of July 7, \$84,508.04?

A. Yes, sir.

Q. Now, the third credit on the account of Governor Frank Steunenberg is for \$91,928.71 and is entered under date June 30-04?

A. That is right.

Q. Now, I show you the last 4, 5, 6 and 7th pages of the statement which has been offered in evidence, and received as 280 $\frac{1}{2}$, and ask you if that credit was not given Governor Steunenberg based upon that statement? A. It was.

Q. Now, that credit of \$91,928.71 on the journal of the company was divided into the proper accounts to which it ought to be charged, namely, millsite, expense, lands, land expense, attorney's fees, interest and taxes, was it not? A. Yes, sir.

Q. And when that account was transferred to Boise, instead of one big credit given in a lump he was credited with that amount and charged to these various heads into which it had been divided?

A. Yes, sir.

Q. Now, Mr. Cotten, I notice on the pages of this

(Deposition of F. H. L. Cotten.)

2801½ which constitutes the statement from which this credit is taken, a lot of notations in lead pencil at the right indicating to what account they should be charged. In whose handwriting are these notations? A. Mine.

Q. Do you recollect the time when these pages constituting part of 2801½, which is marked a “continuation of report July 7-03,” part of which is marked “continuation of report of Oct. 5-03” and the last page of which is marked “personal expenses incurred, March 2-02 to January -03, was made?

A. Yes, sir.

Q. Where was it made? A. At our office.

Q. On whose typewriter?

A. Our, that is the Northwestern Lumber Company's.

Q. State whether or not Governor Steunenberg was here. A. He was.

Q. Who dictated to the stenographer the items making up these reports upon which that credit is based? A. Mr. Steunenberg.

Q. Do you recollect the condition in which he had the reports when he arrived here? A. Yes, sir.

Q. Just state how he had it.

A. We had been waiting for him two or three months or more to get a statement and when he came it was not in very good shape. He didn't seem to have much idea of rendering statements. He would start in, he had some items on it that were in the previous statement, I could not tell which ones, and they lapped over, and he and I went over it together

(Deposition of F. H. L. Cotten.)

and checked out all the entries that were found that he had accounted for in previous statements and I told him, I says, you had better go upstairs and dictate this to Miss Horan, that was our stenographer.

Q. And he did that?

A. He did that. And when he came down, he had the two sides unfooted or if he had them footed; he had that footed, you see here. He had here a charge footed up, here; and I explained to him I wanted them made continuous so they would know what the balance was and when he made a statement again it should begin with that balance.

Q. On the first page of this statement, marked "Continuation of report of July 7" starts with this item "July 7-03 to balance from statement \$2,008.04, does it not?

A. Yes, sir.

Q. Now, I show you a statement from which the first credit was given him and ask you if at the last page, if the lead pencil notations are yours?

A. Yes, they are.

Q. And consist of a computation in which he was given credit for \$84,608.04 as shown by his first statement from which you have deducted \$82,600.00 with which he was debited and the balance shown is \$2,008.04?

A. Yes, sir.

Q. So that he commenced the next statement with that balance?

A. With that balance, yes, sir.

Q. Now, the same thing is true with that part of the statement headed "Continuation of report Oct. 5," is it not?

A. Yes, sir.

Q. Starts with balance of \$781.00?

(Deposition of F. H. L. Cotten.)

A. Yes, sir.

Q. And that balance is shown by computation in your figures on exhibit 279? A. Yes, sir.

Q. Now, Mr. Cotten, these statements rendered by Steunenberg constituted the only information or data you had at this office from which to determine what credits he was entitled to, to offset the moneys you had sent him? A. Yes, sir.

Q. And did you have any other figures or books of account or records of any kind from which to determine what credits Mr. Steunenberg was entitled to, other than the statement he rendered?

A. The statement was the only thing.

Q. So that whatever credits were given him on his account, were based upon his own statement rendered? A. Yes, sir.

Q. Did you ever receive from Mr. Steunenberg any subsequent report later than the one marked 2801½ which was made by him here in July, 1904?

A. Why, I couldn't say as to that; I don't recollect any.

Q. Can you tell by looking at the books?

A. If there are none on the books, I would say there were none.

Q. This statement covered it all, so these two statements marked respectively 279 and 2801½ constituted all of the statements rendered by Steunenberg to the company from which the books were made up and from which his credits were taken?

A. At this office you mean?

Q. Yes. A. Yes.

(Deposition of F. H. L. Cotten.)

Q. And all statements were made to this office until the transfer was made?

A. Until these accounts were transferred, yes, sir.

Q. Did Mr. Barber or Mr. Moon or either of them go over this statement marked 2801½ which Mr. Steunenberg prepared at Eau Claire here, so far as you know?

A. No, sir; I couldn't say as to that.

Q. You went over it with him yourself?

A. I went over it with Mr. Steunenberg and asked him about the different things and marked them as to what they should be charged to.

Q. In conducting the affairs of the Northwestern Lumber Company and the Barber Lumber Company, I ask you as to whether you had to determine the account to which various expenditures should be charged to?

A. Yes; I did not on personal matters; on personal matters everybody vouches for them himself.

Q. On statement 2801½ there are certain charges here, under date of December 14-03; "To expenses in trial cases \$100.00"; same day, "To expense trial of cases \$200.00"; December 30th, "To expense trial of cases \$380.00"; January 2-04, "To expense trial of cases \$20.00"; after which you have marked after each one of these "Attorney's fees"?

A. Yes, sir.

Q. I will ask you on what information you charged that to that account?

A. I asked Steunenberg what the nature of these

(Deposition of F. H. L. Cotten.)

expenses were and he said there was attorney's fees and other expenses connected with it. We opened this account on the same line we have carried similar accounts on the Northwestern Lumber Company's books.

Q. Did you have any personal notice about cases that the company were interested in there?

A. No, sir.

Q. Did Mr. Steunenbergh inform you and tell you about them? A. No, sir.

Q. What kind of cases they were?

A. No, sir.

Q. You simply wrote it on the strength of his statement that they were attorney's fees?

A. Yes, sir.

Q. Is that true of the other items marked attorney's fees on here, if there are such?

A. Yes, sir.

Q. Mr. Cotten, at the inception of the Idaho investment by Mr. Barber and Mr. Moon drafts were drawn on them by A. E. Palmer?

A. Yes, sir.

Q. Who paid these drafts?

A. Northwestern Lumber Company.

Q. And to whom did the Northwestern Lumber Company charge the amounts so paid?

A. To Barber and Moon.

Q. What were the relations of Barber and Moon to the Northwestern Lumber Company so far as these advances were concerned?

A. Simply an individual matter, we made charges

(Deposition of F. H. L. Cotten.)

to them personally.

Q. As a loan?

A. As an advancement on their investments which they were to pay back with interest.

Q. Did they pay it back, Mr. Cotten?

A. The Barber Lumber Company did, their successors.

Q. Mr. Cotten, what was the total amount of credits given to Frank Steunenberg on his account page 3 of the home office books up to the time of the transfer so made to the Boise office his account?

A. \$240,315.50.

Q. And these are the credits you have testified were given to his account based upon the statement made by Steunenberg which I have shown you?

A. All with the exception of the \$1.50 which was spent on drafts.

Q. That is all, so far as I am concerned, Mr. Cotten.

Examination adjourned 10 o'clock A. M. on May 14-09, at this office.

May 14-09, 10 o'clock A. M., examination resumed at this office.

F. H. L. COTTEN, recalled as a witness, testified as follows:

Cross-examination.

By Mr. GORDON.—Mr. Cotten, I understood you to say you were the cashier of the Northwestern Lumber Company and had held that position for about 28 years?

A. For about that, yes, sir.

Q. And the ledger, journal and cash-book of the

(Deposition of F. H. L. Cotten.)

Barber Lumber Company shown you yesterday, I understood you to say you directed the opening of these books? A. Yes, sir.

Q. Who in fact did open the books and made the notations in them at the time the books were turned over to the Barber Lumber Company?

A. Do you mean at the time they were turned over here last December?

Q. When they were opened in the first instance?

A. The writing, I think, will show, Mr. Dawes' handwriting.

Q. Who is Mr. Dawes?

A. The gentleman you met this morning, the bookkeeper.

Q. Of the Northwestern Lumber Company?

A. Yes, and was at that time.

Q. None of the items in this book were put in there by you, were they? A. I think not.

Q. Now, at the time these books of the Barber Lumber Company were opened, which was in May-04?

A. I think that is the date that is on there, May 20-04.

Q. What were these books supposed to contain at that time?

A. Contain all transactions with Mr. Barber and Mr. Moon and the Barber Lumber Company.

Q. That is the defendant James T. Barber and Sumner G. Moon and the Barber Lumber Company?

A. Yes, sir.

Q. From what were they taken?

(Deposition of F. H. L. Cotten.)

A. From accounts of Barber and Moon and Barber Lumber Company on the Northwestern Lumber Company's books.

Q. Did you ever compare these books with the Northwestern Lumber Company's books to see if they were correct and included all the items?

A. Compared with the statements, or with statements similar to that, one or the other, I couldn't say which was compared with the books; and these books were written up from the statements.

By Mr. BUNDY.—You say all accounts of Barber and Moon and Barber Lumber Company?

A. Yes, sir.

By Mr. BUNDY.—That is a little indefinite; don't they contain all the accounts of Steunenberg and other people with the Barber Lumber Company as well as all the moneys advanced to Steunenberg, were charged to Barber and Moon; and these books show many credits to Steunenberg?

A. These of course were made from the statements Steunenberg had rendered and were not entered on the Northwestern Lumber Company's books at all.

By Mr. BUNDY.—That is what I was trying to get at; nor in charging the Steunenberg account for the money, it does not appear on the Northwestern Lumber Company's books at all? A. No, sir.

By Mr. GORDON.—Do you know whether the items noted in the cash-book, journal and ledger of the Barber Lumber Company are the identical items covering the same period as are contained in the

(Deposition of F. H. L. Cotten.)

Northwestern Lumber Company's books covering the same transaction and same period?

A. I have not examined the items but think they were written up from each statement, we undertook to prove our work and I think there is no question about that.

Q. Evidently there are two statements made by the employees or officers of the Northwestern Lumber Company covering the same period and same transaction in regard to Barber Lumber Company and Barber and Moon, are there not?

A. There seemed to be from our examination this morning.

Q. You say these books are made up from one of these statements?

A. Yes, made up from, either one would be the same.

Q. You mean the totals would be the same, balance would be the same? A. Yes, sir.

Q. But the items are not the same?

A. On this I notice this \$20.00, that is the only place.

Q. They are not the same, there is 4 or 5 items in one of these accounts set out in detail which is put in the other one in the aggregate.

A. That one I notice, the one you called my attention to, the telegrams showing who they were to. This puts in the telegrams by the month. Mr. Smith who made up that statement put them in that way and didn't take the trouble to itemize them.

Q. You don't know which of these accounts the

(Deposition of F. H. L. Cotten.)

books of the Barber Lumber Company were made up from?

A. I think likely from that, but I would not be positive.

Q. Then if it was made up from this one they are not an exact copy of the books of the Northwestern Lumber Company?

A. It might not be as to every word, as to phraseology, but the two statements are alike with the exception you mentioned.

Q. If they made up journal and cash-book from these statements they would not be an identical copy of the journal and cash-book of the Northwestern Lumber Company, would they?

A. I don't know as I understand just what you mean by that.

Q. I will change my question *the* this statement is supposed to cover the items on the journal and cash-book of the Northwestern Lumber Company?

A. Yes, sir.

Q. And the other statement that you have a letter-press copy of is also supposed to be made from those books?

A. Yes, sir.

Q. Now, there are a number of items on this statement or the other statement, letter-press statement that are not on here, that is the details of the items?

A. Yes, sir.

Q. Then, if the details are not on here as you stated these books here of the Barber Lumber Company are made up from those statements, then it is not an exact copy of the journal and cash-book of the

(Deposition of F. H. L. Cotten.)

Northwestern Lumber Company, is that correct?

A. I would have to look at that entry in the cash-book to see if that is entered this way or in detail. We kept a memorandum by the month of telegrams and we could have itemized it in detail. He might have asked me; I don't know whether he did or not, to itemize it.

Q. We will put it this way, there are items charged to Barber and Moon or the Barber Lumber Company in the books of the Northwestern Lumber Company covering their transactions down to May 20-04, which are not in the books here?

A. Why I don't think so, except it may not say there were so many telegrams to Mr. Moon or Mr. Barber, but the expense for these telegrams was in these books.

Q. In other words the money items are correct.

A. Yes, sir.

Q. But the details from which these money items are made up in the office of the Northwestern Lumber Company are not in the books of the Barber Lumber Company?

A. I will not say that until I looked at that, examined that.

Q. Will you look and see, Mr. Cotten; are these books here made up from the statement you made in your evidence?

A. Either this or the other one; this looks as if it was the one; it is checked here by me. I said the books were made up under my direction.

Q. Did you compare these books with the books

(Deposition of F. H. L. Cotten.)

of the Northwestern Lumber Company yourself?

A. No, sir; I didn't.

Q. Then you don't know whether they are a correct account of the Northwestern Lumber Company and the Barber Lumber Company, or not?

A. Same way as we know lots of things around the office. There are hundreds of things I can't examine, details of running the office, but I am satisfied they are correct.

(By Mr. BUNDY.)

Q. Your statements rendered back and forth between the Northwestern Lumber Company and the Barber Lumber Company would detect mistakes in the business; by that way you would detect any discrepancy?

A. Yes, sir.

(By Mr. GORDON.)

Q. Now, these three copies are in evidence, are they?

By Mr. BUNDY.—Yes, sir, they are all in evidence.

By Mr. COTTEN.—Here is this item, "Telegraph to December, \$20.50," you see in this one they are mostly itemized (showing account to Mr. Gordon), I don't think there are many there but that are itemized and the others we have the items for.

(By Mr. GORDON.)

Q. Mr. Cotten, then this item of December 31, 1903, in the expense account of the ledger of the Barber Lumber Company as \$20.50 and appearing in the cash-book of the Barber Lumber Company, is a cash item for telegrams in the office books and memo-

(Deposition of F. H. L. Cotten.)

randum of the Northwestern Lumber Company; shows in detail what these items are for?

A. Yes, sir; they are one and the same thing.

By Mr. BUNDY.—Mr. Gordon, do you want a detailed list of the telegrams; if you want them, you can have them.

By Mr. GORDON.—I want as much information from the books as I can get, Mr. Bundy; I want as much information from the books as I can get.

By Mr. BUNDY.—You were up there this morning.

By Mr. GORDON.—I don't remember every item; what I wanted to see was if they were the same as this here.

By Mr. COTTEN.—I think it is in detail with the possible exception—

(By Mr. BUNDY.)

Q. The Northwestern Lumber Company sent and received telegrams and they are charged for them by the western office?

A. No, sir; we pay for them when each message is sent, when Mr. Barber or Mr. Moon sent a telegram, and then we charged it direct to the Barber Lumber Company; but our practice is to keep a memorandum in the cash drawer with all telegrams on for the month, regarding it as cash from time to time, and make one entry at the end of the month instead of from time to time, to save a number of entries during the month.

(By Mr. GORDON.)

Q. In the account or statement *No. "* of Gov-

(Deposition of F. H. L. Cotten.)

ernor Steunenberg—

By Mr. BUNDY.—Number 2; there is no such statement.

By Mr. GORDON.—The second statement then;

Q. In the statement of Governor Steunenberg number 280, dated July 7, 1903, I find at the end of that in blue pencil a notation, "See \$100.00, canceled on both sides"; Mr. Cotten, who wrote that at the bottom of that statement? A. I did.

Q. And what does that mean? I think he explained to me there was something in the account that was refunded and was dropped out of the account.

Now, what purports to be a statement of Frank Steunenberg number 280½, which you testified concerning yesterday, I understood you to say that that was dictated at the office of the Northwestern Lumber Company by Mr. Steunenberg to one of the stenographers of the company?

A. Certain portions of it was, yes, sir.

Q. Which portions of it?

A. Typewritten in blue ink.

By Mr. BUNDY.—All except the first three pages.
(By Mr. GORDON.)

Q. And I notice there is no signature to that; did Governor Steunenberg assign any reason for not signing?

A. I don't know that there was anything said about it.

Q. I notice a date at the bottom of it, "July 1st, 1904. By Balance," on the page next to the last page and the page preceding that; in whose hand-

(Deposition of F. H. L. Cotten.)

writing is that?

A. That is my handwriting.

Q. And the footings in ink are in whose handwriting?

A. Mine. That one hundred dollar mistake was discovered when we wrote it up on the books. It didn't prove and we went over it again and found that one hundred dollars there was error, in the account; that change was made after he had gone away.

Q. Is all the writing on this report, except that in blue typewriting in your handwriting?

A. Do you mean on all parts of it?

By Mr. BUNDY.—You might eliminate these first three pages.

By Mr. GORDON.—I said in blue typewriting; that would eliminate that.

A. Yes, with the possible exception of that correction there of \$100.00 which the \$481.90 is stricken out and \$581.90 written over it. That may be mine, but I hardly think it, but all the others are in my handwriting.

Q. In your handwriting? A. Yes, sir.

Q. And the notations that you have made on here or the writing you have put on there was just to designate to the bookkeeper the place in the various books where it should be charged. A. Yes.

Q. Steunenbergs didn't have anything to do with that?

A. If an entry didn't explain itself, I may have asked him questions about it or something of that kind.

(Deposition of F. H. L. Cotten.)

Q. Do you remember any of those notations that you did ask him about other than that you explained yesterday?

A. No, sir; not in particular, but I would naturally inquire what they were so as to make the proper entries.

Q. Now, when Mr. Steunenberg dictated this account in your office, did he dictate it from notes of any kind he had?

A. He had a statement or statements already prepared.

Q. That he brought here with him?

A. Yes, sir.

Q. Do you remember or not whether they were signed by him?

A. I think they were, but I would not be positive about that.

Q. Do you know where those accounts are now or statement is now?

A. My impression is that after we had checked over the paper and had this done, he destroyed them.

Q. You could not say whether he did or not?

A. I couldn't say positively.

(By Mr. BUNDY.)

Q. Did he leave them with you at your office?

A. He didn't.

By Mr. GORDON.—That is all for the present, Mr. Cotton.

By Mr. BUNDY.—I want to ask Mr. Barber one question.

**[Deposition of James T. Barber on Behalf of the
Defendants (Recalled).]**

JAMES T. BARBER, recalled as a witness, testified as follows:

(By Mr. BUNDY.)

Q. Mr. Barber, I find a charge made against Frank Steunenberg on the ledger of the company, "May 27, 1903. To cash, \$17,500.00," and reference made to page 5 of the cash-book where it is itemized in two items, "April 11, 1903, To your draft on us, \$10,000.00." That has all been explained and the other item, "May 13, 1903, To your draft on us, \$7,500.00." Now, I call your attention to letter taken from the files of the company No. 219, and ask you if by reference to that letter, you can tell what that \$7,500.00 was drawn upon you for?

A. Yes, sir.

Q. State what, if you please.

A. It was to make payment on the Perrault Mill-site option.

Q. Now, I notice, Mr. Barber that Mr. Steunenberg is charged under date of November 30, 1903, with cash, \$14,500.00 on the ledger and refers to cash-book, page 7, and shows the following items: Frank Steunenberg, debtor, September 29th, To your draft on us, \$1500 00; that you have explained too; the next two items, October 16, 1903, To your draft on us, \$3000.00; October 16, 1903, To your draft on us, \$10,000.00. Now, I show you letter marked 281, taken from the files of the company, and ask you if

(Deposition of James T. Barber.)

that is a letter you received from Governor Steunenberg at or about that time? A. Yes, sir.

Q. And it refers to the two drafts last spoken of, \$10,000.00 and \$3000.00? A. Yes, sir.

By Mr. BUNDY.—We offer it in evidence.

“Caldwell, Idaho, October 9, 1903.

S. G. Moon, Secretary,

Eau Claire.

Dear Sir: Am drawing on you today for \$13000.00 separate drafts, of which \$10,000.00 is needed to take up Crooked River titles, and \$3000.00 for Basin titles.

FRANK STEUNENBERG.”

Examination adjourned to May 15th, 1909, at nine o'clock in the forenoon, at this office.

May 15, 1909, nine o'clock A. M. Examination resumed.

The following stipulation was entered into by and between Payton Gordon, Esq., on the part of the complainant, and C. T. Bundy, Esq., on the part of the defendants:

The attorneys for the Government requiring additional time for inspection and examination of the correspondence and books of account of the defendant Barber Lumber Company, and the time limited by order of court for the defendant to complete its evidence having expired by limitation on this date, and counsel for the Government not having completed their cross-examination of the witnesses offered on the part of the said defendant.

IT IS HEREBY STIPULATED, that the time for the defendants to complete taking their evidence

be extended to and include the eighteenth day of May, 1909.

AND IT IS FURTHER STIPULATED, that an order be made herein by consent extending such time; it being further understood that this stipulation shall not extend the time for complainant to take their evidence in rebuttal.

By consent of the parties hereto by their respective attorneys this examination is adjourned to May 17th, 1909, at nine o'clock in the forenoon, at this office.

May 17, 1909, nine o'clock A. M., examination resumed, and by consent of the parties by the respective attorneys, the examination was continued to and adjourned to two o'clock P. M., at this office.

May 17th, 1909, two o'clock P. M., examination resumed.

[Deposition of S. G. Moon, on Behalf of the Defendants (Recalled).]

S. G. MOON, recalled as a witness, testified as follows:

(By Mr. BUNDY.)

Q. Mr. Moon, I show you a letter taken from the files of the company, No. 290, is that a letter received by you as secretary of the company on or about its date? A. Yes, sir.

By Mr. BUNDY.—I offer that in evidence.

“Boise, December 4, 1903.

S. G. Moon, Sec. Barber Lumber Co.

Eau Claire, Wisconsin.

Dear Sir: Herewith letter from Assessor Kotenai

(Deposition of S. G. Moon.)

county that disposes of tax matters. Matters here about as usual.

Final proofs are now being made on 6-4 entries, and I will probably wire you for funds to meet purchases soon.

We have taken possession of the Casten ranch and Hosely has some man living there. He is also cutting the timber.

Very truly,

FRANK STEUNENBERG."

By Mr. BUNDY.—That is all.

[Deposition of James T. Barber, on Behalf of the Defendants (Recalled—Cross-examination).]

JAMES T. BARBER, recalled for cross-examination, testified as follows:

(By Mr. GORDON.)

Q. Mr. Barber, sometime prior to your meeting Governor Steunenberg there had been some correspondence passed between you and Mr. Palmer with reference to Mr. Palmer interesting you in some lands in Idaho, was there not?

A. We had, either had some correspondence or talked with Mr. Palmer with reference to that, not specially as I remember it, to Idaho, but to any timber proposition that might come up in that section of the country.

Q. You had never met Governor Steunenberg until he came here at the instance of Mr. Palmer, had you?

A. No, sir.

Q. You knew of Frank Steunenberg by reputation, however, did you not?

(Deposition of James T. Barber.)

A. I have no recollection of having heard of him. He was generally known with reference to his action in regard to the Coeur d'Alene strike previous to that time when he was governor, but I have no recollection of reading about him in particular.

Q. You knew he had been governor of Idaho?

A. Yes, I think so, and that the first letter we received from Mr. Palmer about the Idaho proposition stated that he had been governor. I knew he had been governor very early in the proceedings, in the transactions.

Q. Did Mr. Palmer send you a report of some lands that he desired you to consider with a view to buying before Governor Steunenberg came to Eau Claire?

A. I have no recollection of having seen such a report.

Q. Do you remember a letter that was read in evidence here by counsel for the Barber Lumber Company in which Mr. Palmer in writing to you, he said he enclosed a report, I don't know as that is the exact expression, concerning the Steunenberg scheme or proposition?

A. I remember the letter, yes, sir.

Q. You have no recollection whether that report came along with the letter?

A. No, sir, I have no recollection of having seen it.

Q. When Governor Steunenberg arrived in Eau Claire, and you met him, where did you meet him and with whom did you meet him?

(Deposition of James T. Barber.)

A. I met him, I think, in the North Western Lumber Company's office; whether Mr. Moon was there when he came in or joined us soon after, I can't say. We were there together.

Q. The three of you were together when you first met Governor Steunenberg?

A. That is my recollection of it.

Q. Will you state what Governor Steunenberg's proposition was at that time?

A. He stated that a man by the name of Sweet had been investigating some timber in the Boise river country and had purchased some claims; that Sweet *could* not or would not finance the thing any further and was willing to sell out. Told us quite a little of the situation and asked us if we would be willing to buy Sweet out and purchase a lot more of the timber.

Q. Do you remember how many claims he said he was interested in at that time?

Q. No, sir; it was some five or six thousand acres; I couldn't tell you definitely.

Q. And they were all the claims that he and Sweet were interested in at that time?

A. I don't know about what they were interested in.

Q. I mean from his statement?

A. He told me nothing more about any claims he and Sweet were interested in.

Q. How did he say he and Sweet were interested in these claims?

A. Why, he said he and Sweet had been buying

(Deposition of James T. Barber.)

some claims from timber and stone entrymen and that they amounted in the aggregate to about five thousand acres; something like five thousand acres.

By Mr. BUNDY.—Sixty-four hundred acres is the report made.

A. Five or six thousand acres; I have forgotten how much it was now.

Q. Did he want to sell these claims outright to you? A. No, sir.

Q. Well, what did he want?

Q. Well, he wanted us to buy out Sweet's interest in these claims and include the cost of cruising, estimating and investigation, and furnish money enough to buy quite a number of other claims which had been filed upon, and which he was confident he could buy; and also, furnish money to buy scrip to take up a body of timber which he represented to be about twenty-five thousand acres.

Q. Did he tell you the number of claims that had been filed upon at that time?

A. He thought he could control; he didn't fix this; if he did, I don't remember.

Q. It was at his suggestion that he could get about twenty-five thousand acres, was it?

A. Yes, sir.

Q. Did he represent that this twenty-five thousand acres were contiguous tracts or composed of contiguous tracts?

A. He represented that they were in one general territory. I do not think there was anything said about their being continuous tracts.

(Deposition of James T. Barber.)

(By Mr. BUNDY.)

Q. What territory? A. Boise Basin.

Q. Was it not necessary that the several tracts should be contiguous before it would be of any real value to you or any other person dealing in lumber?

A. No, sir. The Boise Basin, I think, so called, consisted of the valleys of some three different considerable creeks or rivers, Moores creek, Grimes creek and Granite creek; and these creeks were frequently divided by extensive tracts of land which carried no timber, but were called the Boise Basin as a general distinction, perhaps.

Q. And these tracts that you and Mr. Steunenberg were considering were adjacent to what one of these creeks?

A. All three of them, I think.

Q. What date was it that Governor Steunenberg arrived here, as near as you can remember?

A. I have a very poor head for dates; it was early in March.

Q. 1902? A. 1902.

Q. Do you remember how long he remained here on that occasion?

A. I think he was here two days.

Q. And then you entered into a contract with him, that is in evidence?

A. Not at that time, no, sir.

Q. Well, did you come to a definite understanding with Mr. Steunenberg on his first visit here?

A. No, sir.

Q. Well, what was left open?

(Deposition of James T. Barber.)

A. I might possibly say it was a general understanding, but my recollection is that he went to Chicago to get in communication with Mr. Sweet with reference to some of the matters unsettled; just what they were, I don't know.

Q. Then did he return here?

A. Yes, sir, he returned here.

Q. And I notice that the contract is dated March 12, 1902; was Mr. Steunenberg here at that time?

A. Yes, sir.

Q. And did all of you sign the contract then?

A. My recollection is that Mr. Moon and I signed it at that time; that Mr. Steunenberg didn't; I am not certain about that; possibly he did, but I don't think so.

Q. Was there any reason for him not signing at that time if you and Mr. Moon were ready to enter into the contract?

A. Whether the contract was effective or not depended entirely upon what Mr. Palmer found out with reference to his representations, and the contract was not to go into effect until Mr. Palmer had time to investigate the representations of Mr. Steunenberg.

Q. And they were reported favorably eventually?

A. Later on.

Q. And do I understand from the evidence that is in that that contract was sent to Mr. Palmer after you and Mr. Moon signed it?

A. I think it was. You will remember that the evidence shows that I left here on the night of the

(Deposition of James T. Barber.)

12th, going away on a vacation. What transpired immediately following I simply know by report.

Q. And about a month later on, or sometime in the early part of April, Mr. Palmer in a letter returned that contract; do you remember that?

A. Only by report, I was not here at the time.

Q. That was returned to Mr. Moon, was it? I gathered from some of the other testimony, I believe, of Mr. Barber or Mr. Moon, that that contract was lost or misplaced and that Mr. Palmer in a subsequent letter said he would send another contract or inclose another contract; do you have any recollection of that transaction?

A. The contract was lost, misplaced or mislaid, and Palmer secured another one; I could not tell you when it was done, but I remember that was the situation.

Q. Well, do you know whether the contract that is in evidence now is the contract that was signed first or is it the second contract that Palmer sent?

A. I don't know.

Q. You don't know whether it is the first contract or the second contract?

A. I don't know.

(By Mr. BUNDY.)

Q. You didn't understand Mr. Gordon very well; it is the same contract.

A. It is the same contract, surely; I don't know whether it is the same document or same paper, but it is the same contract. My recollection is that the one that was lost turned up and we had all three of them. We had the one that was lost. Whether that

(Deposition of James T. Barber.)

was a copy that Palmer made of the original, I am unable to tell.

(By Mr. BUNDY.)

Q. They were identical; the same contract?

A. Yes.

(By Mr. GORDON.)

Q. And all were signed by Steunenberg?

A. All signed by Steunenberg.

Q. All bore the same date?

A. All bore the same date.

Q. This twenty-five thousand acres that Steunenberg was to secure was that to be secured by purchase from the various persons that he could purchase it from?

A. I think I said that he represented to us that he and Mr. Sweet had secured the title to five or six thousand acres; that there were several other timber and stone entries he was confident he could purchase. The plan was then to purchase scrip sufficient to take (lieu land scrip) sufficient to take the remainder of the twenty-five thousand acres.

Q. Do you remember when the first scrip was purchased?

A. I can't give the date; I think it is in evidence here. All of the scrip we ever bought is in evidence.

Q. On that first visit with Mr. Steunenberg what was said about forming a company; was that his proposition or was it the proposition advanced by you and Mr. Moon?

A. My recollection is that Mr. Steunenberg desired to be identified with the development and sug-

(Deposition of James T. Barber.)

gested that he wanted to retain or buy an interest in the company which could be formed later on for the purpose of developing the investment.

Q. Do you remember how long after Mr. Steunenberg's visit the company was formed?

A. Why, it was during that summer sometime; it is in evidence and of record; I can't remember the date.

By Mr. BUNDY.—It was organized July 9, 1902.
(By Mr. GORDON.)

Q. And that company was formed for the purpose of taking over the holdings of you and Mr. Moon and Steunenberg in Idaho?

A. The company was formed for the purpose of developing this investment. Mr. Moon and I sold out our interest in it. Mr. Steunenberg was permitted to subscribe for his agreed share of the stock.

Q. I didn't understand that.

A. Mr. Moon and I sold out to the company, transferred the contract and Mr. Steunenberg took his share in stock, and when the company was first formed, it was incorporated for one hundred fifty thousand dollars.

Q. About how many shares of stock were there then?

A. One hundred dollars a share, that was fifteen hundred shares.

Q. And who organized the company; who were the persons who organized the company; who were the incorporators?

A. The records will show; I will have to refresh

(Deposition of James T. Barber.)

my recollection with the records. S. G. Moon, C. W. Lockwood and myself.

Q. And was the stock all taken at that time?

A. It was all subscribed, I think, at that time. Wait a minute; possibly Steunenberg didn't subscribe for his until later.

Q. How much stock did you subscribe to when the company was first formed?

A. Four hundred seventy-five shares.

Q. And how much did Mr. Moon subscribe to?

A. Three hundred forty-five shares.

Q. And Mr. Steunenberg?

A. We subscribed, Mr. Moon and myself or Mr. Lockwood and myself, subscribed for the Steunenberg stock and ordered it issued when the subscription was paid by Mr. Steunenberg.

Q. When the company was first organized, did you and Mr. Moon and Mr. Lockwood and Mr. Steunenberg subscribe for all the stock?

A. The original stock subscriptions for the first one hundred fifty thousand dollars of stock is, J. T. Barber, 475 shares; C. W. Lockwood, 549 shares; William Carson, 1 share; C. D. Moon, 130 shares; S. G. Moon, 345 shares; that makes one hundred fifty thousand dollars.

Q. Mr. Barber, the evidence shows that at the time that Governor Steunenberg was purchasing claims in the Boise Basin, that the Payette Lumber Company were also purchasing timber in the same locality; is that correct?

A. I didn't know that the evidence showed that;

(Deposition of James T. Barber.)

that is your question I don't remember there was any evidence to that effect.

Q. The reason I say the evidence, I had read some letters here, I had forgotten whether they were read into the record as having been written to you, or whether I had seen them myself; what I want to ask you is, was there any agreement or arrangement between you and the representatives of the Payette Lumber Company that you would not purchase any claims in a certain locality in consideration of the fact that they would not purchase any in a certain locality? A. Not with me; no, sir.

Q. Do you know of any arrangement being made between yourself and Mr. Moon and Governor Steunenberg and Mr. Carson several years after this, after the Payette Lumber Company was organized which was several years after this transaction took place, in which you had some talk with some of the officers of the Payette Lumber Company in which it was stated it was hardly fair to purchase land in "our" territory and that members of the Barber Lumber Company would not purchase timber in their territory?

A. The Payette Lumber Company was not organized until several years after all these transactions.

Q. Mr. Barber, when did you first go to Idaho?

A. It was one of the last days of August or the first of September, 1902.

Q. And whom did you meet there then with reference to purchasing timber lands?

(Deposition of James T. Barber.)

A. I don't remember having met anybody with reference to the purchase of timber lands in the Boise Basin, except Governor Steunenberg.

Q. On any of your visits to Idaho did you meet Mr. John Kincaid? A. Yes, sir.

Q. Do you remember which trip it was there that you first met him?

A. No, sir; it may have been on that trip; I never met him but once.

Q. Do you remember when you met him and who you were with when you met him?

A. My recollection is that it was in the rotunda of the Idan-ha Hotel; I think Mr. Steunenberg introduced him to me; whether Mr. Carson was present or not, I do not know; I don't know whether he was present or not.

Q. That was the only time you ever met him?

A. That was all.

Q. Did you ever have any business with him?

A. None whatever.

Q. Just met him?

A. Just introduced; that was all.

Q. Do you remember the last time or the date of your last visit to Idaho?

A. I will have to refresh my memory with memorandum I have here. I seem to have been there from December 8th to 12th, 1906.

Q. Do you, sometime in the spring or summer of 1902, know that Mr. Moon went to Idaho, to Boise, and about the same time Dennis Thornton and Mr. Connors went; have you any recollection of them go-

(Deposition of James T. Barber.)

ing?

A. I know that they all three went, and that Mr. Moon went in the summer of 1902; whether Mr. Connors or Mr. Thornton went with him on that first trip, I don't know.

Q. Not with him but about the same time; if you want that information given as the answer, Mr. Thornton went out about April 1st and Mr. Connors behind Mr. Moon in June.

Q. Do you know when Mr. Thornton was sent to Idaho the first time?

A. No, sir; it seems to me that he went there in April and I was not here at the time.

Mr. Barber, I find on page 44 of the letter-press copy-book of the Barber Lumber Company, a letter dated December 26, 1902, addressed to Mr. William Carson, Burlington, Iowa. The bottom of pages 44 and 45 are torn off about one-third way up the page and I will read the letter and ask you if from the context you can remember what was in the part of the letter that is missing. I show you the letter and ask you if the signature "James T. Barber" is a copy of your signature to the original letter?

A. Yes, sir.

Q. The letter begins: "My dear Mr. Carson: Governor Steunenberg reported here yesterday and I am sorry to say that while he received my wire asking him not to come east until he had obtained options on the millsite, he didn't receive my letter giving full instructions what we wanted and how to do it.

(Deposition of James T. Barber.)

My telegram was somewhat obscure in wording and he misunderstood it and came on without securing the option. He says there is no stir or excitement around Boise and that he will have no difficulty in getting all we want on his return.

He has no explanation to make for the foolish actions of the Scofield people that have, together with Secretary Froelich of Madison, and rich brewer of Milwaukee, whose name he has forgotten, have a good gold proposition on Fall Creek, a tributary of the south fork of the Boise River, and in that vicinity along that creek is a small tract of very fine timber, and they have six or eight," and the rest of that line is torn out and the next line reads: "There are unsurveyed government lands," and the rest of that line is torn and that the next line at the end of the paragraph is "Menacing," "he reports, however," and the rest of the page is torn; and beginning at the top of page 55; I said rest of the page is torn, but rest of the page is missing. At top of page 45 "55¢ per thousand. I have instructed Steunenberg to buy these claims at not more than the above figures, no money to be paid until land office receipt's final receipts are shown and we have had a full opportunity to prove the correctness of Down's estimates by our estimating. Steunenberg is confident he can buy these at possibly \$950.00 per claim or 52¢ per thousand. Does this meet your approval? I also hand you report of estimator employed by the Governor to work on North Fork which explains itself. We have prepared a little map showing location of lands

(Deposition of James T. Barber.)

already secured by," and then there is a place torn out of the letter; and the word "entries, etc., and have shown where the remaining timber on this river is located as reported by Downs. His report shows 314 million tributary to the north fork outside of the basin and is undoubtedly way inside the actual conditions. Steunenberg says that Downs insists that this timber is superior to that in the basin. Downs also insists that there is no timber of value tributary to the south fork except that on Fall Creek where the Scofields are operating, but what there is there will run a million to the forty and is probably the finest," and the rest of that line is torn off, and the next line "in the State of Idaho." "There has been a bill in," and the rest of that line is torn off, and the next line begins "Quarrels to repeal," and the rest of the page is missing. Beginning on page 46, "To take rather precipitate action in this matter. We are now wiring to secure a good estimator to check up Downs. I have written Quarrels if it is his intention to push this bill through this session. If it is should we not buy a little scrip if we can find it at a reasonable price; we will have our six thousand acres in time and we will not use any of it in the Basin awaiting further developments at Washington. I have given Steunenberg instructions to hold up all matters in the Basin at present and devote his entire time and energy to securing what timber there may be tributary to the north fork along the lines herein set forth. If these reports are anywhere near true and we can secure one hundred and fifty

(Deposition of James T. Barber.)

millions on the north fork now filed upon at less than 60¢ per thousand, with the prospect of a hundred and fifty million more together with the mill site on the river, we will be pretty well fixed after all. Please return enclosures at your convenience.

With the compliments of the season etc.

Very truly yours,

JAMES T. BARBER, President."

Q. Mr. Barber, do you remember that letter?

A. Why, indistinctly; yes. I wrote it.

By Mr. BUNDY.—That was about December, 1902? A. December 26th.

By Mr. BUNDY.—After he had been here with Taylor's report?

A. Of course, this whole first part of the business refers to the Crooked River situation. The Crooked river is variously referred to as the property on the north fork of the Crooked river country, but some of the correspondence calls it the Kinkaid tract. This must have been Taylor's report that I referred to as having sent to him. The last part of this page refers, page 45, refers to a bill introduced by Senator Quarrels of the United States Senate and repeal the Timber and Stone Act, I think it is. I think that is the lieu land scrip bill, and I wrote Senator Quarrels if it was his intention to push it.

Q. The first part of the letter there in which you say he left without attending to the options.

A. That was with reference to the millsite. The references there to Scofield have already been brought out. Scofield together with Secretary Froe-

(Deposition of James T. Barber.)

lich and some other parties were making a great talk in the newspapers with reference to their lumbering operations at Boise. They were considered rather menacing to our interests there at one time.

By Mr. BUNDY.—There is a reference in there that you might explain, referred to two or three times as Downs' report as to the timber.

A. I don't remember how we got Downs' estimates on that land unless it was through the purchase of the timber and stone claims.

By Mr. BUNDY.—There is some other correspondence that brings that out; when Steunenberg came here with Taylor's report the first time, he was urging you to buy the timber and stone claims which Downs had located.

A. I remember that part of it, but I speak here of Downs' estimates. We didn't employ Downs to estimate. We must have got these estimates, then we had no estimates, no definite estimates; Downs' estimates must have reference to statements made by Steunenberg as to the quantities of timber on the land and we had previously to this letter instructed Steunenberg to secure an estimator to go on and see whether these representations were true or not.

Q. Representation of Downs?

A. Representations Steunenberg told us Downs had made with reference to the quantity on the land; that he had secured Taylor and that Taylor said practically all the land was entered by timber and stone claims; and that Taylor went up again and reported. All of it is in evidence.

(Deposition of James T. Barber.)

(By Mr. GORDON.)

Q. And these lands you refer to in your letter as having instructed Steunenberg to purchase at the above figures at 55¢ per thousand, referred to unsurveyed lands?

A. They referred to the Crooked river entries.

Q. This tract referred to "Of very fine timber. They have six or eight," and then the page is torn. Six or eight what?

A. I will tell you just exactly what that means. Through the instrumentality or influence of some Wisconsin parties six or eight entrymen or six or eight men and families went out and located on Fall Creek. This is on information and belief I don't know anything about it. There was a little land that could be irrigated along the sides of the stream and which several of these people took up as a homestead and a timber and stone claim on Fall Creek. It was generally supposed that they were there for the purpose of selling out eventually to the Scofield people and we were quite interested to know just what the situation was over there and made some investigation and dropped the whole matter and never bought any of the claims. We never had anything to do with any of the settlers. They are there so far as we know; that timber on Fall Creek is in the hands of the Government so far as we know.

Q. This sentence that follows: I have instructed Steunenberg to buy these claims at not more than the above figures," does that refer to these six or eight claims?

(Deposition of James T. Barber.)

A. To the Crooked river claims. I testified in my evidence that I had instructed Steunenberg to purchase these claims when Taylor found out they had been entered under the Stone and Timber Act.

Q. Now, as to the second paragraph of page 45, "I also hand you the report of an estimator employed by the Governor to work on north fork which explains itself"; was that the report of Taylor?

A. Yes, report of Taylor's.

Q. Have you that report here? A. No.

Q. Do you know where it is? A. No.

By Mr. BUNDY.—It is on file here.

(By Mr. GORDON.)

Q. In the next sentence on page 45: "We have prepared a little map showing location of lands already secured by"; then there is a place torn out. "Entries, etc., and have shown where the remaining timber on this river is located, as reported by Downs"; do you remember what entries are referred to, that missing part?

A. No, sir, I have no recollection of the map at all.

Q. I refer to a letter on page 51 of the Barber Lumber Company copy-book, of date, January 3, 1903, addressed to Frank Steunenberg, signed, James T. Barber, and ask you if that is a copy of a letter you sent to Governor Steunenberg?

A. Yes, sir.

Q. The first paragraph reads: "We are much interested in learning what action you have taken in the matter of Kincaid and also and more particu-

(Deposition of James T. Barber.)

larly with reference to securing options on our proposed millsite"; I don't remember whether that letter is already in evidence, and if it is whether you explained what you were referring to about the action of Steunenberg with Kinkaid?

A. I think the letter is in evidence and that the explanation of it is that these Crooked river lands were referred to in the correspondence as the Kinkaid lands and Crooked river lands, indiscriminately. I think it is in evidence that Mr. Steunenberg when he came on reported that the best of the timber on Crooked river had been taken up by entrymen and that these entrymen had either given options or made some agency arrangement with Mr. Kinkaid for the selling of them, and that letter refers to Crooked river lands being negotiated for by Steunenberg with Mr. Kinkaid.

Q. And the second paragraph of the letter reads: "Will you kindly have Taylor or Downs or someone else who is familiar with men who have driven the river from the mouth of Crooked Creek to Boise, get all the detailed information with reference to the difficulties in the way of driving, number of men usually on the drive and the quantity of logs the crew stated can handle"; do you remember whether Governor Steunenberg carrying out your direction in that paragraph ever got a report from Taylor or Downs with reference to the driving possibilities of the Crooked Creek?

A. The Boise river from Crooked Creek down is what it refers to there, to Boise. I think there was

(Deposition of James T. Barber.)

quite a little said in the correspondence which has already gone in evidence on the subject.

Q. Again, I find a letter on page 53 of the copy-book of the Barber Lumber Company, dated, January 7, 1903, addressed to Frank Steunenberg, Knoxville, Iowa, signed, Jas. T. Barber; that is a copy of a letter sent by you to Governor Steunenberg, is it not? A. Yes, sir.

Q. The letter reads: "I have your letter of the 5th from Washington and note fully its contents and am glad you have adjusted matters with the authorities." Mr. Barber, do you know what Governor Steunenberg's business was in Washington with the authorities at that time?

A. My recollection is that he was trying to hurry up the issue of patents for lands which had been held up for some reason we didn't understand.

Q. Mr. Barber, will you endeavor to find that letter referred to by Governor Steunenberg, written from Washington, January 5, 1903, will you?

A. I will try to find it, yes, but I don't know whether I can or not.

Q. I find a letter on page 89 of the Barber Lumber Company's copy-book, dated, March 9, 1903, addressed to Hon. Frank Steunenberg, Boise, Idaho, and signed, "Very truly, J. T. Barber"; is that a copy of a letter that was signed by you and sent to Mr. Steunenberg? A. Yes, sir.

Q. The letter reads: "The bearer, John Anderson, wants to take up a Government timber and stone claim. I think you might help him through; Pat

(Deposition of James T. Barber.)

Downs or someone else, to a good location. John has been in our employ for many years. Yours very truly, Jas. T. Barber.” Do you know whether John Anderson ever took up a timber claim?

A. No, sir.

Q. Mr. Barber, on page 99 of the Barber Lumber Company’s letter-press book, is a letter signed Jas. T. Barber, Pres., and addressed to Frank Steunenberg, Caldwell, Idaho; is that a copy of a letter you wrote and sent to Governor Steunenberg?

A. Yes, sir.

Q. In the last paragraph of the letter, I find this statement: “As we wrote to you recently, we will not rest at all easily until we absolutely control not less than six hundred millions of timber. We are compelled to leave this important part of the business to you for the present and will urge you to put into it all the energy possible”; do you remember at the time you wrote that letter how many feet of timber you already controlled there? A. No, sir.

Q. Well, did you know how many claims it would take according to your calculations at what the timber was running to the acre there, to aggregate six hundred millions of timber?

A. I can figure it up in a minute if you want to know.

Q. I want to know approximately.

A. About sixty thousand acres at ten thousand to the acre.

Q. Mr. Barber, I find on page 106 of the Barber Lumber Company’s letter-press book a letter dated

(Deposition of James T. Barber.)

April 6, 1903, addressed to Hon. Frank Steunenberg, Caldwell, Idaho, signed, Jas. T. Barber, President, that is a letter sent by you to Mr. Steunenberg, is it not? A. Yes, sir.

Q. I notice the letter reads as follows:

“I have your favors of the first and third, but the deeds sent by express not having yet arrived, I find the letter of April 3rd, which refers to 71 deeds”; do you know anything of the letter of April 1st?

A. I have no recollection of it at all.

The second paragraph of the letter reads:

“I note what you say with reference to Kinkaid and see no reason why we should not complete our original arrangement with reference to land in the Boise Basin as we are still a large acreage short on the original deal.” Do you know whether the letter referred to as of the first refers to the reference made to Kinkaid in your letter?

A. I have no recollection of what the letter of the first contained.

Q. On page 133 of the Barber Lumber Company's letter-press book I find a letter written to Hon. Frank Steunenberg, dated May 6, 1903, Boise, Idaho, and signed Jas. T. Barber, and ask you if you wrote that letter? A. Yes.

By Mr. BUNDY.—We will stipulate that all the letters in the book were written and mailed by the party signing the same.

(By Mr. GORDON.)

Q. The letter reads: “The enclosed is from two men who called upon me sometime ago in Boise and

(Deposition of James T. Barber.)

who are anxious to locate on government land. I think their motive is to work for the Barber Lumber Company when operations are commenced. I would suggest that if you can do anything towards helping these men find desirable locations, you drop Mr. Hanson a line as he suggests. Yours very truly, Jas. T. Barber, President."

I assume from the letter that Mr. Hanson was one of the gentlemen referred to in that letter; do you know who the other one was?

A. No, sir.

(By Mr. BUNDY.)

Q. Is that a letter you received from Mr. Hanson? A. Yes, sir.

By Mr. BUNDY.—That is offered in evidence.

"Everett, Washington, June 17, 1903.

Hon. James T. Barber,

Eau Claire, Wis.

Dear Sir: I met Mr. John Anderson today. He came over to find out what your letter contained. He had heard from his brother and he had told him that you had written but I have not received your letter so it must be lost. If you think it is any show to go back to Boise and find a timber claim, please let us know.

Respectfully,

A. HANSON,

2608 Oak Avenue, Everett, Washington. "

Q. From that letter does that tell you who the two men were?

A. John Anderson and his brother are old em-

(Deposition of James T. Barber.)

ployees of ours here and they wanted to work for the company and wanted to make some money in entering a stone and timber claim if they could.

Q. I find a letter on page 172, dated June 24, 1903, as follows:

“Mr. A. Hanson, 2608 Oak Avenue,
Everett, Washington.

Dear Sir: Replying to your letter of the 17th would say there is no chance for a person in our force at Boise and there is no more opportunity to make money by taking claims in the timber country in that vicinity than there was when the writer last talked with you. As soon as we open up matters in Boise we will try to take up the question of a steady employment for you.

Yours truly,

JAMES T. BARBER.”

(By Mr. GORDON.)

Q. Looking over the book the other day, I noticed that several of the pages are gone; you know nothing about that?

A. Nothing absolutely.

Q. I notice pages 13 and 14 are missing, of the Barber Lumber Company's letter-press book; you know nothing about that or what they contained?

A. Absolutely nothing; no, sir.

Q. I find on page 202 of the letter-press book of the Barber Lumber Company a letter dated, August 25, 1903, addressed to Hon. Frank Steunenberg, Boise, Idaho, and signed, James T. Barber; in connection with the last sentence or last paragraph of

(Deposition of James T. Barber.)

said letter I find the following language:

"I think I failed to tell Mr. Borah what Mr. Cobb promised with reference to the position of the 'Statesman,' in case the state administration saw fit to dispose of the timber at the present time. Will you kindly repeat what I told you in the matter of him? Let me hear from you promptly."

Do you remember what that statement was, Mr. Barber? A. No, I do not.

Q. Mr. Barber, do you or did you or does the Barber Lumber Company, or did the Barber Lumber Company ever hold any stock in the "Statesman" Newspaper Company? A. No, sir.

Q. Well, that refers to the paper?

A. I understand.

Q. Did you ever hold any of the bonds of that company?

A. No, sir, no financial interest whatever.

Q. Mr. Barber, I show you a letter of October 13, 1902, signed William Carson, addressed to Jas. T. Barver, Eau Claire, and ask you if that is a letter you received from Mr. Carson?

A. Yes, sir.

Q. The letter reads: "I have received yours of the 9th, and also the enclosed copy of your letter to Mr. Steunenber and Mr. Steunenber's letter written to you. I return Mr. Steunenber's letter as requested." Do you know to which letter Mr. Steunenber's that refers?

A. Evidently to some letter Mr. Carson. O, that letter is to me; no, I do not.

(Deposition of James T. Barber.)

Q. Of course, there is a letter-press copy of your letter to Steunenberg somewhere?

A. Yes, sir, undoubtedly.

Q. I show you a letter, dated October 18, 1902, addressed to James T. Barber, Eau Claire, Wis., and signed, William Carson, and ask you if that is Mr. Carson's handwriting and you received that letter from him on or about the date, October 23, 1902?

A. Yes, sir.

(By Mr. GORDON.)

"I enclose reports of D. O. Stevenson and Frank Steunenberg, copies of which I made. I will carefully study over the reports and map and in case I have any suggestions to make will communicate with you at once." Do you know what reports that had reference to of Governor Steunenberg bringing of Stevenson in?

A. It was in a report of Stevenson and Steunenberg of the dam on the millsite, Stevenson being the man who did that work.

Q. I will ask you now, Mr. Barber, if the letter-press book, letter-press copy-book of the North Western Lumber Company, and the letter-press copy-book of the Barber Lumber Company here, and the files in the file case that have been brought here by the Barber Lumber Company, contain all letters written by you personally or on behalf of the Barber Lumber Company to any person or persons or corporation with regard to any transactions concerning the acquisition of the timber lands of the Barber Lumber Company in Idaho?

(Deposition of James T. Barber.)

A. Why, they do practically all; there may have been some letters written in Chicago or somewhere else, no copies of which were taken; there may have been letters written on Sunday in our office, no copies of which were taken, but in the general routine of business the letters were copied in these books and placed on the files.

Q. I notice the last letter copied in the Barber Lumber Company's copy-book is in April, 1907, I think, I will ask you it from that time on all copies of letters that have been made are in the files that are here?

A. They are all there as far as I know.

By Mr. BUNDY.—Just explain *that the system in changed now*.

A. About the date mentioned, our system of copying letters was changed and carbon copies of letters were written by us and retained and attached to the correspondence, to the letters to which they were an answer.

(By Mr. GORDON.)

Q. Are all the letters that you have ever received personally or letters addressed to you as president of the Barber Lumber Company or letters addressed to the Barber Lumber Company, having to do with your transactions there in acquiring timber lands in Idaho, or concerning your holdings there in any way, in the files of the Company that you have brought to this office?

A. So far as I know; there may be slight cases where letters have been received and failed to get

(Deposition of James T. Barber.)

into the files by being carried in back to show somebody else or lost and not returned.

Q. All the letters that you know of that have been received are in these files? A. Yes, sir.

Q. Mr. Barber, this last letter that I read to you with reference to these reports which I interrogated you about, I notice a statement on that which reads: "Answered, October 27, 1902"; in looking through the letter files of the Barber Lumber Company of that date, I do not find a letter addressed to Mr. Carson, October 27, 1902; might that have been one of the letters that you failed to copy?

A. October 27th, of course, there was sometimes that they would go into the Northwestern book.

Q. Mr. Barber, do you know whether Mr. Carson ever went to Washington with a view to seeing the officials to get the titles held up under suspension through?

A. I don't remember now that he did; it is possible that he did.

Q. Do you know if he ever went there with reference to having patents issued?

A. I don't remember of his ever having gone to Washington. He may have been there with reference to the titles in question.

Q. I show you a letter dated February 18, 1903, addressed to Mr. James T. Barber, Eau Claire, Wis., signed William Carson, and ask you if you received that letter from Mr. William Carson at the date of the receiving stamp, February 20, 1903?

A. Yes, sir.

(Deposition of James T. Barber.)

Q. I notice the third paragraph reads: "I enclose a clipping from the New York Commercial relating to the Quarrels bill. If the Timber and Stone Act is repealed and substitute is passed that land can be sold in one hundred sixty acre lots at four dollars per acre, you might be able to get along even if the Timber and Stone Act is repealed"; did you know or discuss with Mr. Carson what he meant by being able to get along even if the act was repealed?

A. I don't remember of having any discussion with him on the subject.

Q. Continuing, the letter reads: "Secretary Wilson and also the president of the agricultural department"; I suppose he means there Secretary Wilson of the Agricultural Department, and also the president?

A. I don't know.

Q. "Secretary Wilson and also the president of the agricultural department, I understand, are very much interested in the question of re-forestering the country. If the Timber and Stone Act is repealed, through Secretary Wilson, we might get control of the government land in the Boise Basin at four dollars per acre by convincing the president that a large company would be interested in logging in such a way that pine would reproduce itself, while if a large number of smaller interests were working along the Boise river, the logging would be done in such a way that all hopes of reproducing the timber would be lost, and think we could make a good argument on this subject and prove up our case. Secretary Wilson is much interested in the subject, and

(Deposition of James T. Barber.)

being Iowa people and I am acquainted with him, we certainly could get a hearing." You don't remember of ever talking with him on this subject, do you, Mr. Carson?

A. Not definitely. Does that need any explanation? That seems plain enough about the forestry business.

Q. I find a letter in the Barber Lumber Company's letter-book, on page 5, dated July 29, 02, addressed to Mr. William Carson, Burlington, Iowa, signed Jas. T. Barber, and reads as follows: "I have a rather unsatisfactory letter from McCartney giving lots of advice about the business plans and methods, but saying nothing about our legal possibilities and limitations. I will try and see him in a few days and he will probably tell more than he will write. The more we learn out there the greater the importance of the decision as to the methods of operation of the financial department by us seems to me. I would like to make arrangements with you to the effect that we all meet at Boise as soon after your return from the east as you can arrange it.

I think we should discuss the important matter with more than Jack and I will be ready to go any time after August 15. What do you say to this?

Yours very truly,

J. T. BARBER."

By Mr. BUNDY.—What is the date of that?

By Mr. GORDON.—July 29, 1902.

Q. Mr. Barber, do you know what that had reference to?

(Deposition of James T. Barber.)

A. Only in a general way. I thought it was advisable to discuss the scope of the operations of the company; what we were going to do as to going into timber lands; building sawmills over there at Boise, etc.

By Mr. BUNDY.—Was that the time you were to decide upon the plan of it? A. I think so.

By Mr. MOON.—I remember that Mr. Barber wanted some advice, something about titles on final receipts or something of that sort, but the nature of it was legal advice and it made Mr. Barber a little bit tired and he complained of it to Carson.

(By Mr. GORDON.)

Q. Do you know whether you have that letter to McCartney or not?

A. It ought to be in the files. I don't know whether it is or not.

By Mr. BUNDY.—That is probably the letter Mr. Barber (showing witness letter).

A. I couldn't say whether that is the letter or not. I have no recollection now.

Q. The pages 13 and 14 of the Barber Lumber Company's letter press book that I have referred to as having been written, but missing, I find that from page 15 of the same book it would indicate that a letter to Mr. McCartney was begun on page 14 of that book as the top of page 15 is Mr. A. E. McCartney too. That does not refresh your recollection at all, does it?

By Mr. BUNDY.—Make a memorandum of that Gordon and you can get it from there; what date is

(Deposition of James T. Barber.)

that?

By Mr. GORDON.—August 14, 1902, is the letter before.

By Mr. BUNDY.—When we go to St. Paul we will have McCartney get that letter; he will have it.

Q. I show you letter dated October 27, 1903; Burlington, Iowa; addressed to Mr. Jas. T. Barber, Eau Claire, Wisconsin; signed, William Carson; and ask you if that is a letter you received from William Carson on the date? A. Yes, sir.

Q. Of the receiving stamp, October 29, 1903?

A. Yes, sir.

Q. Reads as follows:

“From reading the newspapers I judge the excitement in regard to fraudulent land entries in the west is increasing all the time and I suppose this will have the effect of stiffening the government in its plans for stopping all entries on public lands. Until the question of fraud in the west has been sifted I suppose that we would be bothered and delayed in acquiring our lands on account of the sins of our predecessors in the west. I believe that it will be very difficult to induce any of our friends in Washington to assist us in getting our entries pushed along for the reason that although they know we are not engaged in any wrongdoing, they will fear criticism in case they interfere in any way. I believe that our friends in Washington will want to keep entire free from the land question until all this matter of fraud has been cleared up. The more I see of the situation the more I am convinced that it is fortunate for us

(Deposition of James T. Barber.)

that we have been able to delay manufacturing operations until we have our title to the timber lands secure. We will get our timber all right, but it is going to take time and trouble.”

Q. Mr. Barber, do you know who Mr. Carson referred to as our friends in Washington getting our entries pushed along?

A. Why, I suppose he referred to the department and considered ourselves on friendly terms with the department. All that refers to the issuing of patents.

Q. The reason I used it was because it refers to entries. On page 255 of the letter-press book of the Barber Lumber Company, I find a letter dated September 26, 1903, addressed to Mr. L. G. Chapman, Manager, Boise, Idaho, signed James T. Barber, President. It reads as follows:

“I am in receipt of yours of the 21st. Under present conditions I hardly think it worth while for me to go west until something turns up absolutely requiring it. I will write Mr. Cobb a letter and send you a copy as you suggest. I cannot help expressing my pleasant disappointment at the,” and there is a part of the page torn out there and the next sentence commences line beginning “Condition, of course upon securing,” and the rest of that line is torn off, and the next line begins “direction of Steunenberg.” “I cannot quite make up my mind that it is the thing for us to do to enter valuable scrip on unsurveyed lands with the probability of the land in question being put into a timber reserve. I am sure that the entries of this character would be held up in Wash-

(Deposition of James T. Barber.)

ington upon the final decision of the donor of the new proposed forest reserve. However, as you have already sent men to investigate the timber on this land, it is well enough to permit the matter to stand in that shape and we will have the information at any rate. I presume Hosely has arrived by this time, and it would be an excellent plan to have him go along with the party in question." I will ask you Mr. Barber to read that letter and see if you can remember what it contained on the part of the page torn out; part of two lines; and to what lands it referred?

A. I couldn't tell you what was in there. I know the reference to Mr. Cobb is with reference to state lands.

Q. You can't recollect exactly what was in there?

A. No, sir.

Q. Mr. Barber, on page 924 of the letter-press book of the Barber Lumber Company, there is a letter dated January 17, 1907, addressed to General E. G. Mullen, Auditorium Annex, Chicago, Ill., signed, James T. Barber, which reads:

"Dear Sir: We will accept your proposition to go to Washington. Kindly ascertain why the patents are held up on the timber and stone entries as stated below and take such action as you think advisable toward expediting the issuing of the same. Kindly make report from time to time of the situation to me here.

Following is the list:

(Deposition of James T. Barber.)

Land Office Receipt No.	Entryman.	Date of.
1803	J. J. Keane,	April 13, 1902.
1870	Geo. B. Gibson,	June 17, 1902.
1876	Lola J. Thurman,	June 19, 1902.
1934	John W. Williams,	July 17, 1902.
1939	Roy Dye	July 18, 1902.
1954	Emma Swan,	July 21, 1902.
1955	Sam W. Swan,	July 21, 1902.
1966	H. T. James,	July 24, 1902.
1967	Chas. Arbuckle,	July 24, 1902.
1968	Susan N. Arbuckle,	July 24, 1902.
2021	Kate A. Hunter,	August, 19, 1902.
2156	Robert E. Heel,	November 20, 1902.
2177	John Christianson,	November 21, 1902.

Yours truly,

JAMES T. BARBER, President.

Q. Mr. Barber, what was the proposition of Mr. McMullen concerning,

A. We were to pay him one hundred dollars to do the work we requested him to do. We wanted to know why those patents were not issuing.

Q. Did you pay him more than one hundred dollars?
A. That was all.

Q. You only retained him for one hundred dollars. Wait a minute. He was going there on other business.

Q. Did you find out why they were held up?

A. I don't think he ever reported.

By Mr. MOON.—As I remember it, while he was there we ascertained that certain patents issued

(Deposition of James T. Barber.)

about that time. I don't know if it was these lands or not, but I remember he sent a list of lands on which patents were just issuing; that was the only report that I know of.

Examination adjourned to May 18th, 1909, at nine o'clock in the forenoon, at this office.

May 18th, 1909, nine o'clock A. M., at said office, the examination was resumed.

JAMES T. BARBER, recalled for examination, testified as follows:

Cross-examination.

(By Mr. GORDON.)

Q. Mr. Barber, did you receive any letters from Mr. Norman M. Ruick concerning the building of a railroad in the Boise Basin?

A. Yes, sir. I think there was one or two letters passed between us.

Q. Are they on file now?

A. I think not. I think they were at Boise at the time of the Borah trial and are there.

Q. And there were a number of letters concerning the transactions in the Boise Basin and parts of Boise county with reference to land transactions there from Senator Borah to you, were there?

A. I think there were a very few letters; I am not certain about that.

Q. Were these letters returned to Boise at the time of the Borah trial?

A. If there were any, they were sent out there.

Q. Sent to Senator Borah?

A. I think they were given to Mr. Bundy to take

(Deposition of James T. Barber.)

out there; is that not right, Mr. Bundy?

By Mr. BUNDY.—No, I think we sent them.

A. I have seen something in the correspondence here.

By Mr. BUNDY.—Do you want that Ruick and Borah correspondence?

By Mr. GORDON.—No.

By Mr. BUNDY.—I will get it if you want it.

(By Mr. GORDON.)

Q. On page 661a of the Northwestern Lumber Company's letter-press book, I find a letter dated May 21, 1902, addressed to A. E. Palmer, Spokane, Washington, signed J. T. Barber, V. P.

A. I will say here that the V. P. is an error of the stenographer; I was not vice-president of anything I was writing about.

Q. It is a letter written in your individual capacity, you being at that time vice-president of the Northwestern Lumber Company?

A. That is if it pertains to the business of the Barber Lumber Company; to that business out there.

Q. This letter in part reads:

“We now have associated with us Mr. William Carson of Burlington, Iowa, who with Mr. Moon, will leave here for Boise in about two weeks. They will go over the ground thoroughly and settle any questions of detail and policy which may come up at that time. We are now negotiating for a three thousand acre block of scrip available in that section of the country. I would like to know if you can use this at once as we understand it must be located in

(Deposition of James T. Barber.)

one transaction." Do you remember whether you acquired that three thousand acre block of scrip of Mr. Palmer?

A. I don't think we did. However, I am not absolutely clear on that.

Q. The letter further reads:

"It is our intention to push the location of timber lands in the Basin as rapidly as can be done intelligently."

Q. What did you mean by that, Mr. Barber?

A. It was our intention; we thought it necessary to make such purchases and scrip entries as we could secure at the earliest possible moment; to push, obtain title to the property as fast as possible.

Q. Do you know whether this page has been put in and numbered 661a or in making the book just failed to number the page in its order?

A. I don't know anything about that at all. It frequently is the case that unnumbered pages are in the book.

Q. Do you know who owned that scrip and what kind of scrip it was you were referring to in that letter?

A. I don't recall it now. It was lieu land scrip.

Q. On page 682 of the Northwestern Lumber Company's letter-book I find a letter dated May 31, 1902, addressed to A. E. Palmer, Spokane, Washington, signed, Jas. T. Barber, and reads: "In the matter of using Forest Reserve Scrip in locating government land, I am informed that the scrip in question may be placed on single forties isolated in

(Deposition of James T. Barber.)

sections and townships, the only condition being that if the scrip in question calls for three thousand acres more or less as the case may be, three thousand acres must be entered at one time." Mr. Barber, does that refer to the same three thousand acres that you did in a former letter written ten days previously?

A. It seems to be a continuation of the reference to the same three thousand acres.

Q. And the purpose there was to locate that scrip on selected forties?

A. Yes, sir. In the first letter you will notice I stated it would be necessary to use it all in a body and then I saw it could not be used in scattered forties, not necessarily contiguous, but the whole must be used at one time at one filing.

Q. Again, on page 760 of the same letter-press book I find a telegram from James T. Barber to A. E. Palmer, dated, Spokane, June 20: "Can we handle five thousand Forest Reserve at four fifty." Do you remember buying that five thousand Forest Reserve at that time? A. I don't think we did.

Q. Do you know from whom you could buy five thousand Forest Reserve when you sent this telegram?

A. I do not. We had the questions up with so many people and so many prices. The detail has gone now. I thought I went over that scrip business, of the purchases we made on the direct examination.

Q. Mr. Barber, Mr. George S. Long, in 1903, was connected in some way with the Weyerhaeuser Timber Company, was he? A. Yes, sir.

(Deposition of James T. Barber.)

Q. And do you know what his position was?

A. I don't know; I don't think he was a general officer of the company.

Q. Do you know what his position is now?

A. No.

Q. Do you know what his salary is?

A. No; not his present salary; no.

Q. Do you know how long he had been connected with the Weyerhauser Timber people in 1903?

A. It was two or three years; I don't know how long.

Q. And at that time he had been purchasing timber lands for the Weyerhauser Timber Company for some years, had he not?

A. Think about two or three years; that is all.

Q. Was he known throughout the country as a man who dealt extensively in timber?

A. No, not until he became connected with the Weyerhauser Timber Company.

Q. That had been several years?

A. Two or three years; I don't remember how long.

Q. And to such an extent that it was necessary for him on one occasion to put titles to certain timber he had purchased in your name? Or rather that the people in the neighborhood in which he purchased that timber would not know that he was purchasing it for the Weyerhauser Timber people Company?

A. Yes, sir.

Q. Mr. Barber, did you ever go to Washington with a view to getting any of these suspended entries

(Deposition of James T. Barber.)

released or patents to any of the lands in which you were interested in Idaho? A. No, sir.

Q. Did you see anyone with reference to having them go, other than Mr. McMullen that has been referred to here? A. I don't think so.

Q. Do you remember whether or not you ever tried to or did interest Senator Spooner in that behalf?

A. Your question brings to mind a letter I wrote to Senator Spooner with reference to something of the kind.

Q. Did you ever receive a letter from Senator Spooner in reply to that?

A. If I did; I don't remember. It seems to me as if I did, too, but I don't remember of receiving it.

Q. After you wrote the letter to Senator Spooner that you have referred to, do you remember whether or not you telegraphed Senator Spooner and wanted to know why he didn't reply to your letter?

A. If I did, I have forgotten that.

Q. And he replied that he had mailed a letter to Mr. Carson at some hotel in New York?

A. I had forgotten that entirely and don't remember it now. Mr. Spooner and I have been personal friends for twenty years or more. It has been my good fortune to be able to assist in a small way at his political fights and he has frequently referred to me as the "original Spooner man."

Q. Mr. Barber, I find on files of the Barber Lumber Company a letter, I don't know whether it is in evidence or not. It is dated, July 27, 1902, and ad-

(Deposition of James T. Barber.)

dressed to you by Frank Steunenberg, No. 134. The second paragraph reads: "In the matter of the consideration named in the deeds is one I have left to the judgment and discretion of the entrymen and Mr. Kinkaid"; then two words torn off the beginning of the next line, and continues, "And unless I receive explicit orders from you to name the exact amount, I don't want to interfere." Do you know what the words that are missing there were?

A. No, sir; I have no recollection of ever having seen that letter at all.

Q. That letter was dated in July, 1902, and that had reference to what deeds, do you remember, or how many? A. What is the letter?

By Mr. BUNDY.—About the consideration of deeds.

A. Oh, I don't remember how many deeds. There was some correspondence with reference to deeds stating wrong consideration. It is all in evidence there.

Q. Was there ever more than one batch of deeds that you had to get second deeds or new deeds to replace them?

A. I couldn't say now to what extent this was done.

Q. I find a letter in the files of the Barber Lumber Company dated May 29, 1903, No. 226, addressed to James T. Barber, Eau Claire, Wisconsin, signed Frank Steunenberg. The last paragraph reads, "I wish you would inform Mr. Moore that my list of titles Basin is not yet completed as Mr. Kinkaid has

(Deposition of James T. Barber.)

not been replacing some of them, has not been here for nearly ten days.”

By Mr. BUNDY.—In that letter “Moore” should be “Moon.”

(By Mr. GORDON.)

Q. And that would indicate that almost a year later they had not gotten all those deeds replaced?

A. It would indicate that they were taking second deeds on some of the claims a year afterwards; yes.

Q. Did you know whether or not the second deeds were taken from some of the entrymen for other reasons than the consideration named in the deeds was insufficient?

A. I think it is in evidence there that there was quite a number of deeds mistakes were made in description.

Q. Any other reason?

A. I don't remember.

Q. Do you remember whether some of the deeds were given because the entrymen thought they had made their deeds too soon after entry?

A. I don't think I know anything about that.

Q. Do you know when Mr. Palmer deeded to the Barber Lumber Company the title that he held in trust for them?

A. No, sir; I have not the deed in mind.

Q. Did he ever make more than one deed to you for the same lands?

A. I don't know.

Q. You have no recollection upon the subject, have you? A. No, sir.

(Deposition of James T. Barber.)

Q. Mr. Barber, do you know how many acres of scrip the company purchased altogether?

A. I can't tell you offhand.

Q. Can you tell me how many purchases of scrip they did purchase?

A. We purchased so much and were disappointed in using it. I have in mind only two parcels of scrip that we purchased.

Q. From whom did you purchase these two parcels?

A. I think they came from the Northern Pacific Railway. It is possible that Mr. Palmer purchased some in addition to that from somebody else.

Q. And the two parcels you got from the Northern Pacific are they known as parcels one and two?

A. I think perhaps they are so designated on the books.

By Mr. BUNDY.—That was unsurveyed scrip?

A. One lot was unsurveyed and the other came through Stein, a man by the name of Stein, but it was Northern Pacific scrip, and the deal was made through Mr. Phipps.

Q. Mr. Barber, do you remember when you laid that first scrip?

A. Why, I have not got the dates, no, sir. Mr. Moon looked after that a great deal more than I did.

Q. Then all the scrip that the Barber Lumber Company bought did not exceed more than seven or eight or nine thousand acres of land, did it?

A. Well, I have not got the figures in my mind; I can't tell you. It was between eleven and twelve

(Deposition of James T. Barber.)

thousand acres.

Q. Do you know how much of that scrip was unsurveyed? A. I can't tell.

Q. Was half of it unsurveyed scrip?

A. Very small portion of it; not over two thousand acres; I should say. One piece was sixteen hundred acres; I don't know how much the other was.

Q. And for the surveyed scrip you paid about five dollars an acre.

A. I should say between four fifty and six dollars; \$4.50 for some and \$5.35 for some.

Q. That was surveyed scrip? A. Yes.

Q. And for unsurveyed scrip, how much did you pay? A. Ten dollars per acre, I think.

Q. Mr. Barber, do you know whether this scrip that you purchased, you could locate on either odd or even sections or did you have to locate it on one or the other as you selected?

A. I think the scrip was good on any Government land regardless.

Q. The first scrip was purchased in August 15, 1902; that was surveyed scrip.

By Mr. BUNDY.—The first scrip that was located was unsurveyed scrip; that was in November, 1902.

By Mr. MOON.—The first scrip that was bought was six thousand acres from Stein.

(By Mr. GORDON.)

Q. Do you know when you located the six thousand acres of surveyed scrip which you acquired in August, 1902?

(Deposition of James T. Barber.)

A. I can't tell you the date; it was several years afterwards; different times along.

Q. Have you any records in the office when and where you located the other portions of scrip?

A. Mr. Moon can answer that question better than I can; I don't think so though.

Q. Mr. Barber, in going through the files I find that there is a letter addressed to you by Mr. Chapman, December 25, 1905, and the next letter is dated, January 16, 1906, and between that date Governor Steunenberg was assassinated; was there any correspondence between you and Mr. Chapman or letters between you and Mr. Chapman concerning the assassination of Governor Steunenberg?

A. I have no recollection of anything. I think we were notified by Mr. Chapman by telegraph.

Q. That is as far as your recollection goes?

A. Yes, sir.

Q. Would that telegram naturally be on the files here?

A. I don't know why it shouldn't. It is a presumption on my part that we were notified by telegraph. I have an impression that he notified us by telegraph.

Q. You don't know where that telegram is?

A. No.

By Mr. MOON.—The first news that I got of it; we might have telegraphed afterwards; the first news I got or heard of it as I remember it, was Sunday afternoon; you noticed it in a paper and telephoned it to me, and I found it and told you where it was in

(Deposition of James T. Barber.)

the Chicago paper; maybe after that you may have received a telegram.

By Mr. BARBER.—I think we got a telegram.

By Mr. BUNDY.—I don't know why such a telegram should be in the Barber Lumber Company's files; I don't remember seeing any such telegram.

(By Mr. GORDON.)

Q. You remember about the time the investigations were being had by a grand jury concerning the transactions of yourself and other members of the Barber Lumber Company in April, 1907, and that Mr. Chapman was held in contempt for declining to produce certain books and records of the company before the Grand Jury? Did Mr. Chapman consult you either by telegram or letter concerning that matter? A. No, sir.

Q. And did he advise you that he had been held in contempt of court by telegram or letter?

A. I don't think he did, but I am not positive.

Q. Did you have any information from any source at that time that Mr. Chapman was in difficulty?

A. Why, I took the daily Boise paper and I knew what was going on from what I read in there. I don't know how official information came to me that he was in trouble.

Q. Mr. Barber, I have seen a letter somewhere in the files of this company addressed by yourself to Mr. Chapman, your manager out there at Boise, Idaho, dated, April 26, 1907; beginning at the top of page 2, the letter reads as follows: "I want to thank you for the members of the company and particularly

(Deposition of James T. Barber.)

for myself for the position you took and your courage and dignity with which you carried through the consequences. It was not pleasant to be practically in jail and I can assure you that your course is most heartily approved by all the members of the company." The course you refer to in that letter was that of your approval and of the other members of the Barber Lumber Company in Mr. Chapman's declining to bring into court the books and papers, etc., of the Barber Lumber Company?

A. My recollection of the reasons for writing the letter is this: Mr. Chapman, under the advice of his attorney, at Boise had taken a course which had taken a great deal of moral courage. He was not an officer of the company and I thought he was entitled to the expressed thanks of the officers of the company for being brave enough to carry out the instructions of his attorney.

Q. Mr. Barber, I find on the files of the company a letter dated Eau Claire, Wisconsin, March 22, 1905, addressed to James T. Barber, Esq., President, and signed Owen, on letter-heads of John S. Owen Lumber Company; did you receive that letter from Mr. Owen on or about the date it bears date?

By Mr. BUNDY.—What is the number of that?

By Mr. GORDON.—It has no number on it.

A. Yes, sir.

Q. Mr. Barber, from the context of this letter it would seem that Mr. Owens is advising you that he is locating seven or eight persons on quarter sections of land, giving the names of the persons and descrip-

(Deposition of James T. Barber.)

tions of the property on which they had been located, and the addresses of each of these persons, as in some place in Idaho; from Harrison, Idaho; one from Boise, Idaho; another from Council, Idaho; are these locations of these persons made in Idaho or in Wisconsin?

A. I really don't know a thing about them. I don't think they are in the Boise River territory at all. I don't think we ever did anything with them.

Q. On the second page, beginning at the second paragraph, it reads:

"Mr. Button located these parties on these claims. Says all good claims figure out two millions to the quarter. We gave them an estimate on them and only two-thirds of the actual amount. Thought he and I would get them. This Stewart the banker has been already to handle or did. You can put some one on to these. You don't want to go after them. You never got anything for these. I would like to get something of these parties for locating them."

What is that all about, Mr. Barber?

A. I have an indistinct recollection that Mr. Owen wrote to me about this land which was, I think it was in the Payette country. It was not in the country we were operating in at all. Mr. Owen lives here in town and in talking it over he thought we might possibly buy these and make an exchange with somebody who had land in our territory, but we never did anything about it at all. Had nothing to do with it upon receipt of that letter and never did afterwards.

Q. One of the men mentioned in this letter is John

(Deposition of James T. Barber.)

Anderson.

A. If I had a Chicago directory I would show you about five thousand John Andersons.

Q. Is that the John Anderson you introduced to somebody by letter?

A. I don't think so; I have no means of knowing what John Anderson did after he went west.

Q. In a letter dated February 21, 1902, and written to you, Mr. Barber, by A. E. Palmer, and which I think is already in evidence, No. 111½, in which Mr. Palmer says: "I mailed you to-day and report comes Governor Steunenberg of Idaho has sent you Mr. Campbell. Steunenberg will be here in a few days and Campbell is going to finance him because he has confidence in him. Mr. Campbell says if I want the deal he will turn the Governor over to me."

That report referred to in that letter is the report that I questioned you about yesterday and which you said you didn't remember of receiving or ever having seen. Continuing, the letter reads: "He is no doubt a capable and reliable man. If you want to look into his scheme, will pay his expenses to Eau Claire and back, wire me, and I will have him go to see you."

The claim he refers to in there is the proposition that Governor Steunenberg made to you later in the following March, and upon which was based the contract that you have in evidence here?

A. Yes, sir.

Q. "If you do not wire me re this Steunenberg matter the whole thing will be arranged here shortly after his arrival. His report will explain itself."

(Deposition of James T. Barber.)

What did you mean by this, "would be arranged after your arrival"; "Mr. Campbell would finance it"; "Mr. Campbell gave me this in confidence"; what was the confidence, do you know?

A. I don't understand the question; the letter says Mr. Campbell gave him this in confidence.

Q. Did Mr. Campbell think it was such a good proposition that he didn't want anybody but friends to know about it?

A. I think it was something of the kind; I don't know why he restricted it.

Q. In the letter dated February 22, 1902, from Mr. Palmer to you, Mr. Barber, the concluding sentence is: "In the meantime Steunenberg's assistance would be worth a great deal to you." From the context of what goes before it would appear that that had reference to the same property under consideration. In what way would Steunenberg be of great assistance to you? *In a political.*

A. He was an honest man and familiar with the country. I think the correspondence lays a great deal of stress upon his honesty.

Q. In a letter of March 2, 1902, which is also in evidence, a letter from Mr. Palmer to you, Mr. Barber, you use this expression: "He does not want anything out of the deal if we go into it"; that meant that you would not be liable to Mr. Campbell for any commission or pay for turning over the proposition that had been suggested to him? A. Yes.

Q. Again, in a letter dated March 7, 1902, from Mr. Palmer to you, you use the expression: "I pre-

(Deposition of James T. Barber.)

sume, of course, you will assume all responsibility of cruisers, and I am to furnish signed copies or originals of reports before disbursing any money; you must be responsible for the men you sent into the woods, etc.”

Those reports to be reports from the cruisers?

A. Yes, in regard to location.

Q. Had nothing to do with reports from Governor Steunenberg as to titles?

A. Had nothing to do with that.

By Mr. BUNDY.—By men sent into the woods what did you mean?

A. Correct estimates of timber; quality; availability of it, the timber, etc.

(By Mr. GORDON.)

Q. There is a letter from Mr. Palmer to Mr. Moon, dated April 2, 1902; I assume you are familiar with all the letters that are in the files that are sent to either you or Mr. Moon; I will read it and ask you what it means. The letter beginning at the top of page two, reads: “The country beyond Pioneersville slopes towards the Payette so that some of the timber that Steunenberg had in mind might come in beyond. Will keep Steunenberg in good humor as he would be valuable in acquiring state lands. In-close state map to show where I was.”

Do you know what land that had reference to that slopes towards the Payette and that Steunenberg had in mind?

A. What Palmer was trying to say was that part of the twenty-five thousand acres of Boise Basin

(Deposition of James T. Barber.)

timber that Steunenberg had in mind was, as a matter of fact, was on land that sloped away from the Basin, and he was trying to have us abandon the Boise River basin proposition and take up the Payette River proposition.

Q. Again, in the letter dated April 3, 1902, written by Mr. Palmer to Mr. Moon, he says: "Steunenberg tells me that Capt. Henry is after the Payette state lands. Would like to send a man up there. My object in wanting option on the Cobban tract of timber is to have it tied up while you secure the state lands and Steunenberg claims he can get it. Wire me if I shall have the Governor sign contract and proceed to close up deal."

What state lands were you desirous of acquiring at that time, Mr. Barber?

A. I think that Mr. Palmer refers to the State lands tributary to the Payette territory at the time he wrote that letter. The first part of the letter has reference particularly to sale going on with the Payette scheme and he asks if he shall get Steunenberg to sign contract to abandon the Payette tract and go on to the Boise. The letter particularly refers to signing the contract, going on pushing purchases with reference to the contract. But that contract refers to Payette the Cobban lands were all in the Payette Basin; none of them in the Boise Basin at all; and it was the State lands along the Payette that Palmer was figuring he could get for someone else.

Q. I find a letter from Mr. Palmer to Mr. Moon dated April 4, 1902, in which he says: "The only

(Deposition of James T. Barber.)

title so far acquired of this timber is receiver's receipts, and unless the government should find cause to refuse patents they should come along all right." They have reference to what lands, Mr. Barber?

A. To Basin lands.

Q. In another letter from Mr. Palmer to Mr. Moon, April 5, 1902, he says: "Am going to Boise today to close with Steunenberg. Do you understand the only title you get to the land is receiver's receipts and these receipts are in the names of a great many people. Personally, I am satisfied every thing will come out as the Governor expects. Think it is his intention to scrip the balance of the lands. This land may cost more, but it is safer." What did you understand, Mr. Barber, Mr. Palmer to mean, that the plan was safer?

A. Mr. Palmer didn't like the idea of having receiver's receipts in the hands of a whole lot of people after we had bought and paid for the title. He was afraid there would be a break in the link some there so that we would not finally get the titles that they sent in to us. Evidently, that was what he had in mind. That is the construction I put on it.

By Mr. MOON.—I take it that Mr. Palmer meant that a title direct from the Government was a good deal better than the title that was gotten from an irresponsible entryman that hadn't got his patent yet.

[**Deposition of S. G. Moon, on Behalf of the Defendants (Recalled—Cross-examination).**]

S. G. MOON, recalled as a witness, testified as follows:

Cross-examination.

(By Mr. GORDON.)

Q. Mr. Moon, I find in the files of the Barber Lumber Company a telegram dated April 4, 1902, addressed, A. E. Palmer, Spokane Hotel, Spokane, Washington, and signed, S. G. Moon, and reads: "Yes, if everything seems square." Did you send the telegram to Mr. Palmer of which this is a copy?

A. Yes, sir; I think so.

Q. At that time where did you keep the copies of your letters and telegrams?

A. In D. R. Moon book of the Northwestern Lumber Company.

Q. Will you state why this happened not to be copied in the D. R. Moon, copy-book?

A. I don't remember why it was not. I may have sent the telegram here down town and made a copy of it for the files.

(By Mr. BUNDY.)

Q. Look at it and see if the copy is in your handwriting? A. It is; yes, sir; it is mine.

(By Mr. GORDON.)

Q. Would the fact that the paper indicated that it has never been folded suggest to your mind that you did make it down town and never put it in your pocket?

A. It would rather indicate that it was written

(Deposition of S. G. Moon.)

at the office, but I don't remember definitely anything about it, except that I made that; that is in my handwriting, and I marked it "Copy," for what reason I don't know.

Q. It is clear to you that the copy has never been folded?

A. It does not seem to be; apparently it is not.

Q. I find also in the files of the Barber Lumber Company a telegram dated Eau Claire, Wisconsin, April 7, 1902, addressed to A. E. Palmer, Boise City, Idaho, signed, S. G. Moon, marked, "Charge S. G. Moon, repeat this message," and reads as follows: "I understand the titles have been perfected in a legal way to certain lands in certain parties. Final proofs made and approved by local officials. Receipts issued or will issue upon payment of certain sums to Government and nothing remains to be done but patent to issue; that these parties have legal right to sell and we to buy; patents will issue to us or owner to perfect our titles in these lands; we to pay Sweet the amount to which he is entitled and other actual investment necessary to procure title of lands to be vested in us; our contract and letter of introductions defines our rights and understanding. If in doubt, await letter from Mr. Frawley." Mr. Moon, do you know why this telegram was not copied in the regular letter-press copy-book?

A. As I remember it I came down and asked Mr. Frawley to advise with me about what to answer Mr. Palmer. Mr. Frawley drew the contract and I came down and asked him as I remember it, and dictated

(Deposition of S. G. Moon.)

the telegram, and it was possibly sent from here; possibly it was sent from this office; there was, however, a copy of that letter, as I remember it, containing it; that is possibly on file too. That is as I understand it.

By Mr. BUNDY.—That was sent for Mr. Moon by Mr. Frawley.

By Mr. MOON.—The wire, as I remember it was sent from this office.

(By Mr. GORDON.)

Q. And you remember having sent this message?

A. Yes, sir.

Q. I mean in the manner in which you say; you notice that it says "repeat this message"; was it repeated to you?

A. Yes, sir.

Q. Do you know where the message that was repeated is?

A. I don't know; it was verified, I don't know whether we got it; I presume we did; I don't remember about that; it was repeated by the Boise office and checked as correct; that is all I know about it.

Q. Among the files here, Mr. Moon, is a telegram from Palmer to you dated, April 18, 1902, sent from Boise, in which he says, "The deal is closed; statement and draft forty thousand from Spokane Saturday Sweet thirty thousand held by Steunenberg six months as guaranty to title." What was the matter with the Sweet titles that necessitated Steunenberg holding the money six months as a guaranty?

A. I don't know definitely; Mr. Steunenberg was

(Deposition of S. G. Moon.)

guaranteeing these titles to us under his contract, and I presume he wanted Sweet to share the responsibility with him; that is as I took it at the time.

Q. In a letter dated Spokane, Washington, April 14, 1902, addressed to you, Mr. Moon, signed Palmer, the second paragraph reads: "I also made draft on you for \$1201.20 in payment of three entries made at land office at Boise on Saturday, \$1200.00, exchange on draft \$1.20. Gave Steunenberg my check for the \$1200.00 and expect to be advised today or tomorrow of the proper entries for same, viz., names of locators, land office receipt numbers, which information I shall forward to you." What did you understand, Mr. Moon, by Mr. Palmer paying \$1200 for three entries?

A. I understood he paid three hundred dollars a piece for them.

Q. Did you understand that you were buying entries at four hundred dollars a piece?

A. I don't remember definitely what I did infer from that, but I probably inferred as Mr. Steunenberg had told us that he was making partial payments on some of them and would hold back the balance until patents has issued. I don't remember definitely about that, but that is probably what I inferred.

Q. Did he send you the names of these three locators and the land office receipt numbers?

A. I don't remember definitely about that; I presume he did.

Q. Do you know where they are if they did come?

(Deposition of S. G. Moon.)

A. I can only surmise that at the time; in the first place when he sent me from time to time lists of these entries which I kept until I afterwards got the deeds for the same entries and checked them with these lands, and I held these for a time after that until all of the land matters were transferred to the Boise office. From my own memorandum I also checked many of these on plats. You could see the location better, and after I sent the deeds out there I culled out a lot of that memoranda that had been checked and threw it away thinking it was of no use.

Q. The third paragraph reads: "I wish you would have somebody check over the written lists of descriptions sent you with the plat." What description does that refer to and what plat and where are the descriptions and where is the plat?

A. He sent me some lists of lands containing the names of entrymen and the descriptions with a sort of receipt on the bottom or acknowledgment by Mr. Steunenberg which said something like this: "I hold receipts for the above entries. Signed, Frank Steunenberg." I don't remember the exact words; but as I remember it typewritten lists, mostly filled in by, signed by Frank Steunenberg with the acknowledgment as I say after. There was a whole lot of memoranda and the only way I can account for our not having them now is that I threw them away thinking they were of no value because we had the deeds to the same lands afterwards.

Q. As I understand you to say, you made search for this paper and cannot find it?

(Deposition of S. G. Moon.)

A. Yes, sir; if I had considered that receipt of any value after the deeds came I probably would have taken better care of it. My first impression was that I had sent that to Boise with the deeds, but we have been unable to find them, but I do remember of culling out a lot of memoranda at the time that I sent the deeds out there, most of which I made myself. Your next sentence reads: "They do not have their reports in very convenient shape, and I would not be surprised if there are a few discrepancies in the descriptions, but they can be easily corrected." Whom do you mean by "they"; the entrymen?

A. I presume I meant Steunenberg and Sweet.

Q. And the next sentence: "I am keeping a memoranda here of all these lands, moneys paid on same, etc." Did you ever see the list that Palmer was keeping?

A. No, sir, not that I know of.

(By Mr. BUNDY.)

Q. He rendered you a statement?

A. Yes, but this particular record he was keeping there I don't know.

By Mr. BUNDY.—Let it appear that the counsel for the defendants ask that the gentleman accompanying Mr. Gordon purporting to be an unofficial stenographer and whose identity with the case is not disclosed, that they request that he be sworn to determine what relation he bears to this case and in what capacity he is here, and counsel for defendants insists that he may be sworn.

By Mr. GORDON.—Mr. Triplett is my private

(Deposition of S. G. Moon.)

stenographer and is here to take notes of the testimony as given.

By Mr. BUNDY.—You refuse to allow him to be sworn, do you?

By Mr. GORDON.—Yes, sir.

By Mr. BUNDY.—I don't object to his taking notes, but I object to his taking my statements.

By Mr. BUNDY.—You are a lawyer, are you, Mr. Triplett; do you pretend to be an expert stenographer?

By Mr. TRIPLETT.—I do not make any pretensions.

By Mr. BUNDY.—Are you a stenographer at all.

By Mr. GORDON.—Don't answer him. He refuses to answer.

Q. I find, Mr. Barber, in the files, a letter dated April 25, 1902, signed A. E. Palmer, to Sumner G. Moon, and reads as follows:

“Dear John:

Herewith I inclose letter from Thornton Dated, April 19, also description and estimates of land he had looked at at that time. Wish you would send him one of your estimate books.”

The letter attached is signed Dennis Thornton, Addresses to A. E. Palmer, Spokane, Washington, and is dated, Placerville, Idaho, 19-4, and the letter of Thornton reads as follows:

“Mr. A. E. Palmer,

Spokane, Washington.

Dear Sir: We just mailed the book with some es-

(Deposition of S. G. Moon.)

timates. I could not put them on them town plats, I got. You can copy them off and send the book back or send to the Northwestern Lumber Company, Eau Claire, for one of them estimate books that they use. You will find there is some difference in the land I have located and what you have got on them plats I located the lands he gave me first, but he was up here this week and there was quite a difference but he said it would be all right because they would all have to be located if there is any timber on it. He put a cross on sections that there was only three or four forties on, and I looked the whole section, but he has given me a correct plat now.

Yours very truly,

DENNIS THORNTON."

Q. Do you remember receiving that letter?

A. No doubt I received it; I don't remember particularly.

By Mr. BUNDY.—How is that 4?

By Mr. MOON.—4-19: April 19th.

(By Mr. GORDON.)

Q. Assuming that your explanation or statement that that 19-4 is not the year, but is April 19th, it would be as forwarded by letter of April 19th, 1902?

A. It would be April 19th, 1902; yes, sir.

Q. There is in evidence the book that has been referred to here and which you testified concerning as the 6-4 book?

A. No, sir.

Q. There is in evidence that book?

A. Yes, sir.

Q. There is also another book in evidence show-

(Deposition of S. G. Moon.)

ing some payments of Dennis Thornton?

A. I don't know about that.

Q. Do you have any recollection of having a book or report of Dennis Thornton's other than this, or have you any recollection on the subject at all, of a report from Mr. Thornton?

A. Yes, I think that all of his reports came to us eventually. He was sending for a book there and I sent him out one of our blank estimate books. It was an entirely different book from the plat-book.

Q. What I want to find out is whether these descriptions and estimates of the lands referred to in Palmer's letter is the letter attached, or whether there was a book or something that came along with it?

By Mr. BUNDY.—He is sending for a book there.

A. As I remember it, Mr. Palmer forwarded the estimates which he received from Thornton to this office. At the time we transferred land matters to the Boise office after the office was opened there, these estimates were sent out there, that is as I remember it. I think all the written estimates are in the Boise office; that is, the written reports by the estimators are in the Boise office.

Q. Well, now, is the description and estimates of Thornton referred to in Palmer's letter among those reports and estimates that are at the Boise office?

A. I presume so, I don't know.

Q. In other words, you didn't take this letter of Thornton's which was attached as a report referred to or estimate referred to in Palmer's letter?

(Deposition of S. G. Moon.)

A. I presume there were other estimates with that letter; I don't remember anything about it; there may have been copies of estimates which Palmer made.

Q. There is a telegram on file with the Barber Lumber Company here, dated May 1, 1902, addressed to you, Mr. Moon, by Mr. Palmer, in which he says: "Steunenber contract mailed you April 12 separate from letter. Will have another sent at once." Do you remember receiving that telegram?

A. I think I received it. I remember the fact that the contract didn't come; I remember that particularly; I don't definitely remember that particular telegram. I remember the information it conveyed.

Examination adjourned to 1:30 o'clock P. M. this day.

1:30 o'clock P. M. this day, examination resumed.

**[Deposition of F. H. L. Cotten, for the Defendants
(Recalled).]**

F. H. L. COTTEN, recalled as a witness, testified as follows:

(By Mr. BUNDY.)

Q. I show you a statement marked Defendant's Exhibit "D" and which you have marked "Barber and Moon and Barber Lumber Company in account with Northwestern Lumber Company, Eau Claire, Wisconsin"; is that a statement you have prepared since you testified? A. Yes, sir.

Q. A prepared copy from the books of the Northwestern Lumber Company?

A. Yes, sir.

(Deposition of F. H. L. Cotten.)

Q. Does that statement, exhibit "D," contain each and every item charged against Barber and Moon in their individual transactions, as well as all charges made against the Barber Lumber Company, on the books of the Northwestern Lumber Company, up to May 20th, 1904? A. It does.

Q. The books which have been presented here, cash-book, journal and ledger of the Barber Lumber Company, were opened on May 20th, 1904, and were written up from the books of the Northwestern Lumber Company from which exhibit "D" is a copy?

A. Yes, sir.

Q. So that the three account-books, ledger, cash-book and journal contain a correct transcript, statement of all accounts, all charges and all credits which appear on the books of the Northwestern Lumber Company against Barber or Moon or against the Barber Lumber Company, in the Idaho land business? A. Yes, sir.

Q. And the books at Boise in so far as certain accounts were transferred from the Eau Claire office to the Boise office were made from the statement you sent out there taken from the cash-book, ledger and journal here?

A. Yes, sir, so far as I know.

Q. You remember, Mr. Cotton, of sending to Mr. Davis, the Boise bookkeeper, a letter of instructions to open books in which you sent him a detailed statement of all accounts that were being transferred from this office to that?

A. Yes, sir, I remember that.

(Deposition of F. H. L. Cotten.)

Q. These accounts or statement of accounts which you sent to Mr. Davis were taken from the ledger, cash-book and journal of the books kept here?

A. Yes, sir.

Q. And contained everything pertaining to these accounts which were on the books here?

A. Yes, sir, everything.

By Mr. BUNDY.—I offer that exhibit “D” in evidence and in connection with it the ledger, cash-book and journal of the Barber Lumber Company kept here at Eau Claire. (Received.)

It is stipulated that the books need not be copied into the record, but that the same shall be shipped to Boise and filed with the clerk for use on the trial of this action.

By Mr. BUNDY.—That is all.

Defendant's Exhibit "D."

Eau Claire, Wis., May 20, 1904.

Barber & Moon,

(J. T. Barber and S. G. Moon)

In Account with Northwestern Lumber Company.

1902.

Mch.	6.	To Cash, Paid Frank Steunenber,		
		Currency	\$ 75.00	
		Chicago check #36,624	115.00	
				\$ 190.00
"	7.	" " Telegram to A. E. Palmer	1.35	
		" "	1.20	
		" C. H. Henry	1.35	
				3.90
"	8.	" " Telegram to A. E. Palmer .....		.80
"	10.	" " Telegram to Frank Steunenber, Chicago,		.40
"	22.	" " S. G. Moon's telegram to Frank Steunen-		
		ber, Idaho .....		.75
"	24.	" " Express on samples Idaho Pine to Stevens		
		Point, Wis. ....		.30
"	25.	" " Express on package to Cobban, Casey &		
		Co., Butte, Montana .....		.60
"	27.	" " S. G. Moon's Chicago check #819		5.10
"	29.	" " Telegram to A. E. Palmer about Dennis		
		Thornton ...		.75
"	29.	" " Check #60,177, Dennis Thornton		150.00
"	31.	" " Telegram to A. E. Palmer, March 13th...		.60
Apr.	3.	" " Telegram to A. E. Palmer		1.00
"	8.	" " Telegram to Boise, Idaho		9.75
"	9.	" " Telegram to A. E. Palmer, April 8th...		.85
"	17.	" " Checks #60,261 and 60,263, to J. T. Joyce,		
		Cashier, for A. E. Palmer's drafts:		
		One draft	38,763.75	
		One draft	1,201.20	39,964.95
"	29.	" " A. E. Palmer's Demand Draft of April 25,		
		1902		826.00
"	30.	" " S. G. Moon's Chicago check #824 to H.		
		M. Davenport, recording papers in Scho-		
		field case		5.10
				<u>41,160.85</u>

vs. The Barber Lumber Company.

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1902.			Forward,	\$	41,160.85
May 8.	To	Cash, A. E. Palmer's draft of May 2, 1902	\$	250.25
May 9.	"	"	Telegram to William Carson50
" 10.	"	"	"	.....	.50
" 12.	"	"	J. T. Barber's telegram to A. E. Palmer	.....	.75
" 13.	"	"	S. C. Moon's telegram to A. E. Palmer, Spokane	.....	.75
May 22.	"	"	Minneapolis check #1718, to Mrs. Dennis Thornton, Chippewa Falls	.....	100.00
June 9.	"	"	Telegram to Wm. Carson	.....	.71
		"	S. G. Moon	.....	.75
					1.46
" 20.	"	"	Telegram to S. G. Moon	.....	.80
		"	"	.....	.75
					1.55
" 21.	"	"	Telegram to S. G. Moon	.....	.90
" 26.	"	"	A. E. Palmer's draft of June 8, 1902,		5,005.00
			A. E. Palmer's telegram forwarded to S. G. Moon, Glenwood, Wis., Care Train #1	.....	.37
" 28.	"	"	Check #60,578, Mrs. Dennis Thornton		100.00
" 28.	"	"	S. G. Moon, Expense trip to St. Paul, etc., per S. G. Moon's Expense Book, page 62.....	12.11	
			Expense on trip to Idaho with men, per S. G. Moon's Expense book, pages 68-69	.....	292.95
					305.06
" 30.	"	"	A. E. Palmer's draft of June 23, 1902		963.55
" 30.	"	"	Land Book, sent A. E. Palmer	.....	10.28
July 1.	"	"	A. E. Palmer's draft of June 25, 1902	.....	5,005.00
			Chicago check #37,092, Burlington Lumber Co. Expense John Campbell and man, Duluth, St. Paul and return	.....	48.00
					5,053.00
" 3.	"	"	Paid A. E. Palmer's draft of June 27, 1902.....		5,005.00
" 7.	"	"	Telegram to Frank Steunenber	.....	.80
" 9.	"	"	A. E. Palmer's draft of June 30, 1902		5,005.00
" 14.	"	"	S. G. Moon's telegram to A. E. Palmer		.95
" 14.	"	"	A. E. Palmer's draft of July 7, 1902		5,005.00
" 16.	"	"	S. G. Moon's check #854, to Secretary of State, for filing Articles of Incorporation	.....	150.00
" 19.	"	"	Recording Articles of Incorporation, Barber Lumber Company	.....	3.50
" 22.	"	"	A. E. Palmer's draft of July 14, 1902		130.70
					<hr/>
					\$ 68,255.72

1902.	Forward,	\$68,255.72
July 22.	To interest on account to July 21, 1902, per state-	
	ment	\$ 608.47
" 23.	Balance of Barber & Moon Account transferred to	
	Barber Lumber Company	6,146.01
		<hr/>
		\$ 75,010.20

CREDITS.

1902.			
July 19.	By error charges of recording Schofield papers, viz.:		
	March 27, 1902	\$5.10	
	April 30, 1902	5.10	\$ 10.20
		<hr/>	
" 23.	By 50% Assessment on stock in Barber Lumber Co.,		
	advanced by Barber & Moon, viz.:		
	J. T. Barber .....475 shares	23,750.00	
	S. G. Moon .....295 "	14,750.00	
	C. D. Moon .....130 "	6,500.00	
	J. G. Dudley 50 "	2,500.00	47,500.00
		<hr/>	
" 23.	By Cash, Carson & Lockwood, viz.:		
	Chicago E-7,393	25,000.00	
	Chicago 11,709,	2,500.00	27,500.00
		<hr/>	
			<hr/>
			\$ 75,010.20

vs. The Barber Lumber Company. 4771

Eau Claire, Wis., May 20, 1904.

Barber Lumber Company,

In Account with North Western Lumber
Company.

1902.			
July 23.	To Cash,	Express on seal, July 22, 1902	\$.45
" 25.	" "	Express on Letter Book .....	.50
" 30.	" "	A. E. Palmer's draft. (No date.)	10,010.00
" 31.	" "	2 telegrams, A. E. Palmer.	2.00
		1 telegram, Carson .....	.50
			<hr/>
" 31.	To	Seal	2.00
		Letter Book	4.67
			<hr/>
Aug. 4.	To Cash,	Express on package from A. E. Palmer	.30
" 8.	" "	Check #60,775, Mrs Dennis Thornton ...	150.00
" 9.	" "	Currency to A. E. Palmer, given by S. G. Moon	40.00
" 9.	" "	Check #60,780, C. B. Connors, V. o. S. G. Moon	200.00
" 11.	" "	A. E. Palmer's drafts, viz:	
		August 4, 1902	10,010.00
		" 4, 1902	161.75
			<hr/>
" 15.	" "	Chicago check #37,321, W. H. Phipps, Land Commissioner, for scrip	30,000.00
" 26.	" "	Check #60,836, Wm. Anderson, v. o. S. G. Moon	50.00
" 30.	" "	Telegrams in August	1.00
" 30.	To	One Rubber Stamp .....	.12
Sept. 3.	To Cash,	Check #60,868, Wm. Anderson, on account	100.00
" 8.	" "	Express on packages from S. D. Childs & Co., Letter Heads .....	.55
" 16.	" "	Chicago check #37,465, C. H. Hein, acct. land scrip	2,100.00
" 16.	" "	Minneapolis check #1,957, W. H. Phipps, recording four deeds from N. P. Ry. Co. to S. G. Moon	6.00
" 18.	" "	Chicago check #37,474, Wm. Carson, expense, 2 trips to Idaho	190.00
" 19.	To	S. G. Moon's Expenses on thip to Boise and Spokane, per his Expense Book, page 70	213.75
" 19.	" "	S. G. Moon, for cash paid Dennis Thornton, Sept. 4, 1902	100.00
" 22.	To Cash,	Check #60,941, Dennis Thornton, balance on Idaho trip	272.65
			<hr/>
			\$ 53,616.24

1902.				Forward,	\$ 53,616.24
Sept. 22.	To	Cash, Freight on Stock Book and balance of letter-heads from Chicago .....			.25
" 23.	"	"	Paid draft of A. E. Palmer, Sept. 15th		186.55
" 24.	"	"	Check #60,947, Frawley, Bundy & Wileox		213.50
" 25.	"	"	Chicago check #37,518, to S. D. Childs & Co., for account, viz.:		
			Bill 9/11, 5,000 letter-heads ...	32.00	
			Bill 9/16, 300 stock certificates	30.00	62.00
Oct. 4.	"	"	Check 60,992, G. W. Smith, P. M., 3,000 stamped envelopes		64.20
" 7	"	"	Check 61,006, Wm. Anderson, balance of account, v. o. S. G. Moon		46.25
			Check 61,011, C. B. Connors, balance of account, (order S. G. Moon)		125.20
" 17.	"	"	N. Y. Check #1,042, Frank Steunenberg, survey millsite	63.50	
			Livery	4.00	67.50
Nov. 4.	"	"	N. Y. check 1,058, A. E. Palmer		3,000.00
" 24.	"	"	J. T. Barber's telegram to Wm. Carson .....	.75	
			Wm. Carson's telegram to J. T. Barber .....	.32	1.07
" 29.	"	"	Telegram to F. Steunenberg, Nov. 10th,		.75
Dec. 3.	"	"	N. Y. Check #1088, A. E. Palmer	2,000.00	
			N. Y. Check 1089, "	2,000.00	
			N. Y. Check 1090, "	2,000.00	6,000.00
" 19.	"	"	Telegram to B. Campbell, Ass't Traffic Mgr.....		.67
" 31.	"	"	Telegrams for December, 1902		1.95
" 31.	To		J. T. Barber, for traveling expenses to January, 1903, per Expense Book ...		213.85
1903.					
Jan. 10.	To	Cash, Minneapolis check #2180, Clapp & Macartney,			575.30
" 20.	To	December telephone tolls, Mr. Barber to Burlington			2.25
" 22.	To	Cash, Telegram to Steunenberg, 1/18 .....			.80
" 27.	To	Cash, Telegram from Steunenberg			1.65
" 31.	"	"	Telegrams for January, 1903		
			Telegram to Steunenberg .....	.75	
			"	1.15	1.90
Feb. 3.	"	"	Telegram from F. Steunenberg		2.10
" 16.	"	"	Chicago check #38,203, To Wm. Carson, for Mr. Carson and Mr. Rand's expenses, Burlington to Boise, Idaho, (letter 2/13.)		267.00
" 18.	"	"	Frank Steunenberg's draft of Feb. 10, 1903		20,000.00
" 20.	"	"	Frank Steunenberg's draft of Feb. 13		25,000.00
			Forward,		\$109,450.98

vs. The Barber Lumber Company.

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1903.			Forward,	\$109,450.98
Feb. 26.	To Cash,	Telegram from Frank Steunenberg,		
		2/25-03	2.05	
		Telegram from Frank Steunenberg,		
		2/26-03 .....	.75	2.80
" 28.	" "	Telegram Hotel Idanha, 2/13 ....	.75	
		Telegram F. Steunenberg, 2/26 ...	.75	1.50
Mar. 23.	" "	Frank Steunenberg's draft of Mar. 16,		
		1903		20,000.00
" 30.	" "	Freight on Books		1.13
April 7.	" "	Chicago check #38,454, Secy. of State		
		fees for increase of capital stock,		
		\$150,000.00 to \$600,000.00		450.00
" 10.	To	2 Clerk of Court certificates as to F. H. L.		
		Cotten being Notary Public, used on		
		certificate of Amendment to Articles of		
		Incorporation .....		.50
" 11.	To Cash,	Frank Steunenberg's draft of April 3,		
		1903		10,000.00
" 24.	" "	Recording Amendment of Articles of		
		Incorporation		1.00
" 25.	" "	Express on Cash-book and Journal from		
		Hall & McChesney		1.50
" 30.	" "	Telegrams for April,		3.10
May 4.	" "	Telegrams, May 2, 1903, viz.:		
		Mr. Barber to Borah, Boise	1.50	
		Borah to Mr. Barber	1.00	2.50
" 6.	" "	N. Y. check #1,245, A. E. Palmer for		
		services in land matters		2,500.00
" 13.	" "	Frank Steunenberg's draft of May 6,		
		1903		7,500.00
" 30.	" "	Telegrams in April, viz.:		
		To C. J. Mullen.....	.75	
		To W. E. Borah	1.05	
		To F. Steunenberg.....	1.15	
		From F. Steunenberg .....	.80	
		To F. Steunenberg .....	.75	
		From F. Steunenberg	1.10	5.60
" 30.	To	Books		51.75
June 8.	To	Telephone to Carson, Burlington, 5/4 ...		2.25
" 15.	To Cash,	Freight on Letter File		1.80
" 20.	" "	Express on papers sent to F. Steunenberg		.60
" 23.	" "	Chicago check #38,808, per J. T. Barber		50,000.00
" 25.	" "	Telegram from Frank Steunenberg		1.35
" 26.	" "	Telegram from Boise, Idaho		1.60
			Forward,	\$199,979.96

1903.			Forward,	199,979.96
June 30.	To Cash,	Telegrams during June, viz.:		
		6/17, To Wm. Carson	\$.62	
		6/18, Wm. Carson .....	.50	
		6/18, To F. Steunenberg	1.20	
		6/20, To F. Steunenberg .....	.75	
		6/20, From F. Steunenberg	1.35	
		6/23, To First National Bank	1.25	
		6/24, To F. Steunenberg .....	.75	
		6/27, To F. Steunenberg .....	.75	
		6/27, From F. Steunenberg	1.55	
		6/27, From F. Steunenberg .....	.85	9.57
" 30.	To	Filing Cabinet and Index Cases		39.60
July 6.	To Cash,	Express on plans returned to Allis		
		Chalmers Co. ....		.25
" 31.	To	.....	2.25	
	ad.	.....	1.60	3.85
" 31.	To Cash,	Telegrams, viz.:		
		7/2, To F. Steunenberg	1.00	
		7/16, " " .....	.75	
		7/20, " " .....	.75	2.50
Aug. 21.	" "	Cheek #62,602, Wickham & Farr, for		
		Power of Attorney, relating to Idaho		2.00
		land .....		.25
" 21.	" "	Telegram to Mr. Hoseley		1.75
Sept. 5.	To	One Diagram Book, per S. G. Moon		
" 5.	To Cash,	Chicago check #39,119, Expense of trip		151.00
		of G. D. Hoseley to Boise, Idaho		
" 29.	" "	Frank Steunenberg's draft of Sept 18,		1,500.00
		1903,		
" 30.	" "	9/1, Telegram to Harvey Murphy ..	.60	
		9/4, Telegram to F. Steunenberg ...	1.20	
		9/8, " " .....	.75	
		9/8, Telegram from F. Steunenberg	1.25	
		9/8, Telegram to F. Steunenberg ...	.75	
		9/9, Telegram to J. C. Stubbs .....	.77	
		9/10, Telegram from F. Steunenberg	.95	
		9/10, Telegram to F. Steunenberg ...	.75	
		" " " " .....	.85	
		" " " " .....	.75	
		" Telegram from F. Steunenberg	.75	
		9/10, " " .....	.75	
		9/15, Telegram to L. G. Chapman ...	.75	
		9/28, Telegram to F. Steunenberg ...	.75	
		9/29, Telegram from F. Steunenberg	.90	12.52
Oct. 1.	To	4 Notarial Certificates from Clerk of		
		Court on Affidavits regarding scrip, by		
		S. G. Moon		1.00
" 8.	To	Frawley, Bundy & Wilcox's bill, Sept. 22,		
		1903, drawing Power of Attorney		2.00
" 13.	To Cash,	L. G. Chapman's draft, 10/8		1,000.00
			Forward,	\$202,706.25

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1903.			Forward,	\$202,706.25
Oct. 14.	To	Telephone Tolls in September, to Macartney50
" 16.	To Cash,	F. Steunenberg's draft, Oct. 9th	3,000.00	
		F. Steunenberg's draft, Oct. 9th	10,000.00	
" 24.	" "	Paid L. G. Chapman's draft of 10/14, ..	1,000.00	
" 31.	" "	Telegram 10/6, to A. E. Macartney .40		
		" 10/8, to L. G. Chapman .. .75		1.15
Nov. 30.	" "	Telegram 11/27, to Wm. Carson .....		.50
" 30.	To	Interest on your account from July 23, 1902, to December 1, 1903, at 5%	493.80	
Dec. 10.	To Cash,	Chicago check #39,629, First National Bank, Boise, credit F. Steunenberg ...	10,000.00	
" 24.	" "	N. Y. check #1,438, First National Bank, Boise, Idaho, v. o. J. T. Barber	2,600.00	
" 24.	" "	Chicago check #39,730, First National Bank, Boise, Idaho, v. o. J. T. Barber	10,000.00	
Dec. 31.	" "	Telegrams for December, viz.:		
		12/10, To F. Steunenberg .....	.75	
		12/18, " "	2.80	
		12/26, " "	1.20	
		12/28, " "	2.65	
		12/29, " "	2.40	
		12/29, From F. Steunenberg	1.60	
		12/29, To Calvin Cobb	4.90	
		12/31, From Calvin Cobb	3.45	
		12/31, To Calvin Cobb .....	.75	20.50
" 31.	To	J. T. Barber's traveling expenses, per his expense book, Jan. 1, 1903, to Nov. 28, 1903	722.90	
" 31.	To	Interest on your account, Dec. 1, 1903, to Jan. 1, 1904, at 5%	116.65	
1904.				
Jan. 1.	To	Labor and material (Stanley Office Acct.) used in experimenting with log flumes at Stanley. Itemized statement sent to C. W. Lockwood included in statement rendered Jan. 1, 1904	313.48	
" 11.	To Cash,	Chicago check #39,813, sent Boise, Idaho, for your account on Barber Lumber Co. books	500.00	
" 13.	To	Telephone Tolls, 1/29, Wm. Carson	2.25	
" 30.	" "	Chicago check #39,918, W. E. Borah, Boise, Idaho, (Account F. Steunenberg on B. Lbr. Co. Books)	6,600.00	
" 30.	" "	Telegrams 1/11, Calvin Cobb	3.10	
		" 1/21, to Boise	3.75	6.85
" 30.	To	One Letter Book		4.67
			Forward,	\$248,089.50

1904.			Forward,	\$248,089.50
Feb. 22.	To Cash, Chicago check #40,022, sent W. E. Borah, Boise, Idaho			10,000.00
" 29.	To Cash, Telegram 2/15, to W. E. Borah ....	.80		
	" " " ....	.75		
	" 2/22, "	1.15		2.70
Mar. 17.	To Telephone Tolls, 2/26 and 2/29, Burlington	2.25		
		2.25		
	2/29, W. W. Phipps	1.10		5.60
May 16.	To Cash, Check 40,447, A. E. Macartney, cash payment on contract for 2,640 acres of land in Idaho with Northern Pacific Railway Company			5,000.00
			Total Debits,	\$263,097.80

CREDITS.

1902.				
July 23.	By	Balance of Barber & Moon Account transferred to Barber Lumber Co.	\$	6,146.01
" 30.	By	10% assessment on subscriptions to stock in Barber Lumber Co., viz:		
		J. T. Barber	4,750.00	
		S. G. Moon	2,950.00	
		C. D. Moon	1,300.00	
		Jos. G. Dudley	500.00	9,500.00
" 30.	By	Carson & Lockwood, check #271—10% assessment on Barber Lumber Co. stock		5,500.00
Aug. 15.	By Cash, Estate of Wm. Carson, check #278,....			13,750.00
" 16.	By	25% assessment on stock in Barber Lbr-Co., viz:		
		J. T. Barber	11,875.00	
		S. G. Moon	7,375.00	
		C. D. Moon	3,250.00	
		J. G. Dudley	1,250.00	23,750.00
Nov. 4.	By Cash, A. E. Palmer refunded a portion of amount paid Aug. 11, 1902, on his draft of Aug. 4, 1902, (in N. Y. Exchange)			5,000.00
Dec. 11.	" "	15% assessment on Barber Lumber Co. stock, Wm. Carson Estate check #307		8,250.00
" 11.	By	15% assessment on Barber Lumber Co. stock, viz:		
		S. G. Moon	295 shares, 4,425.00	
		C. D. Moon	130 " 1,950.00	
		Jos. G. Dudley ..	50 " 750.00	
		J. T. Barber	475 " 7,125.00	14,250.00
			Forward,	\$86,146.01

vs. The Barber Lumber Company. 4777

1903.		Forward,	\$ 86,146.01
May 27.	By Cash,	Clapp & Macartney's check #4,142 on St. Paul to C. W. Lockwood, Treas., endorsed to us	5,000.00
June 3.	" "	Received of C. W. Lockwood, Treas., Chicago Exchange #29,950	36,500.00
		Received of C. W. Lockwood, Treas. Chicago Exchange, #12,699	5,000.00
" 30.	By "	L. G. Chapman's order #179	500.00
July 3.	" "	Mrs. S. F. Moon's order 1,508...13,750.00	
		S. G. Moon's order #392 .....22,000.00	
		J. T. Barber, 25% assessment on 670 shares Barber Lumber Co. stock	16,750.00
		C. D. Moon, 25% assessment on 470 shares Barber Lumber Co. stock	11,750.00
			64,250.00
" 18.	By Cash,	J. A. Smith's check #5,504, 25% assessment on 50 shares stock	1,250.00
1904.			
Jan. 25.	By Cash,	C. W. Lockwood's check on First National Bank of Burlington, for 15% on stock subscription, viz:	
		C. W. Lockwood, 15%.....	21,840.00
		Wm. Carson, 15%.....	60.00
		H. S. Rand, 15%.....	3,000.00
		A. E. Macartney, 15%.....	3,000.00
			27,900.00
" 25.	By	15% on Barber Lumber Co. stock viz:	
		J. T. Barber, 670 shares...10,050.00	
		S. G. Moon, order 496, 880 shares	13,200.00
		C. D. Moon, order 14, 470 shares	7,050.00
		Mrs. S. F. Moon, order #1,716, 550 shares	8,250.00
		L. G. Chapman, order #200, 15% assessment on Barber Lumber Co. stock	300.00
			38,850.00
" 28.	By Cash,	J. A. Smith's check #5817, 15% assessment on stock	750.00
		Total Credits,	\$266,146.01

SUMMARY.

Total credits to May 20, 1904	\$266,146.01
To Total Debits to May 20, 1904	263,097.80

1904.

May 30.	By Balance this date,	\$ 3,048.21
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Explanatory.

There are three charges for telegrams in the foregoing statement that are not itemized or explained in detail, viz.:

1st. The charge of August 30, 1902, for cash paid for Telegrams in August, \$1.00, should have been entered on the Cash Book, viz:

J. T. Barber's telegram of Aug. 11, 1902, to A.

E. Palmer	\$1.00
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2nd. The charge of December 31, 1902, which reads, "Telegrams for December, \$1.95" should have been entered on the cash-book. viz:

J. T. Barber's telegram of Dec. 15, 1902, to F.

Steunenbergs	\$.75
Telegram, Dec. 26, 1902, to C. B. Steunenbergs	1.20

\$1.95

3rd. The charge of April 30, 1903, which reads, "Telegrams for April, \$3.10" should have been entered on the cash-book, viz:

Telegram received by J. T. Barber April 16th

(to J. T. Barber from?)85
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Telegram April 17, to William Carson75
--	-----

Telegram April 27, to F. Steunenbergs75
---	-----

Telegram April 28, to E. G. Mullen75
--	-----

\$3.10

Defendant's Exhibit "D."

(By Mr. GORDON.)

Q. Mr. Cotten this includes, this exhibit "D" includes everything that was in the last statement or report of Governor Steunenbergs?

A. Governor Steunenberg's reports never got on to the Northwestern Lumber Company's books: this went directly on to the Barber Lumber Company's books. These are the accounts prior to the time we opened the Barber Lumber Company's books:

By Mr. GORDON.—That is all.

**[Deposition of S. G. Moon, for the Defendants
(Recalled).]**

S. G. MOON, recalled as a witness, testified as follows:

Cross-examination.

(By Mr. GORDON.)

Q. In your examination in chief you have testified that you had received a wire from Governor Steunenberg to the effect that the situation there was most satisfactory and that the party had been recalled. Is that telegram in the records here; yes, it is in the letter of December 17, 1902, written by you to Mr. Palmer; you acknowledge his letter of the 14th of December and say, "I note what you say about suspended entries being released"; what did you mean by that; what suspended entries were there?

A. I don't remember about that; if I could see the letter I might possibly tell.

Q. Page 1401 of the D. R. Moon book.

A. I don't remember definitely about that.

Q. In the letter written by Mr. Palmer to you from Spokane, June 27, 1902, he says, "I have drawn on Barber and Moon for five thousand dol-

(Deposition of S. G. Moon.)

lars. Steunenbergh phoned yesterday saying that the local land office has issued final receipts and he had taken deeds for same which required money." These six deeds covered recent entries so it would appear the receiver has withdrawn his objections."

Q. Do you know what deeds and entries that had reference to?

A. No, sir, not particularly. It had reference to some of the Basin entries.

Q. In a letter dated July 3, 1902, Mr. Palmer, in writing to you, says, that he incloses Conner's report on lands to be located by scrip; he also says that Conners is now in 6—4; do you know where the report of Conner's is on that?

A. I presume it is in the Boise, in the files in the Boise office.

Q. Do you remember when Mr. Thornton was directed by you to go to Spokane the first time whether you gave him a letter to Mr. Palmer, a letter of introduction?

A. I think I did.

Q. I notice in a letter here of June 15, 1902, addressed to you by Mr. Palmer, he attaches a report of Dennis Thornton of date, July 10th. At the end of that report Mr. Thornton says: "In the first plats that Mr. Kinkaid gave me there is some state selections in town 7, range 4 east. I will look over these lands until I get further orders from you and also any good sections adjoining them." Do you know why Mr. Thornton went to Kinkaid to get plats of lands in which you were interested?

(Deposition of S. G. Moon.)

A. No, sir.

Q. Mr. Moon, I have a letter dated, July 26, 1902, which appears to be a copy of a letter from C. B. Conners to A. E. Palmer and at the bottom of that letter are the initials S. G. M. and then in lead pencil is the following: "Somehow Conners neglected his instructions and evidently didn't get at least three letters I wrote him instructing him to meet me in Boise on the 25th and he was not there. I telephones Thornton to tell him to start to Eau Claire by way of Spokane. I got a very poor report on Conners in Tacoma recently. (Signed) A. E. Palmer." Do you remember receiving that letter?

A. I don't remember it particularly; no doubt I received it.

Q. Did you ever hear of or did you ever have any report from Conners on 6—4 lands?

A. Yes, sir.

Q. In what form was it? A letter?

A. No, I think it was a detailed statement of the timber, on lands in 6—4, was sent by Palmer to us; afterwards sent out to the Boise office. I don't remember whether it was in a book or sheets. And I don't remember whether it was the original report or a copy of a report from Palmer; I think I got the original report from Conners, however.

Q. The letter, copy of a letter from C. B. Conners to A. E. Palmer referred to reads: "I send to you today by mail my report on 6—4 east as ordered by you," then there is more of the letter and after

(Deposition of S. G. Moon.)

the signature is a postscript: "As I am liable to see you in a few days, I will not write any explanations to 6—4 east"; and it is your impression that you received a copy of the report that Connors refers to in this letter as having mailed Palmer?

A. I think I did. I think the information he reported about 6—4 was that a large part of the land in the western part of the town was Bald Mountain and contained no timber in the southwestern part perhaps. His instructions as I remember it were to cruise the whole town. He didn't cruise part of the western part of that town for the reason, that is by forty acre pieces, report on them by forty acre pieces, for the reason that he could see that the whole country was Bald Mountain and contained no timber.

[Deposition of James T. Barber on Behalf of the Defendants (Recalled—Cross-examination).]

JAMES T. BARBER, recalled for cross-examination, testified as follows.

(By Mr. GORDON.)

Q. Mr. Barber, I show you a letter, dated, Boise, Idaho, August 15, 1902, addressed, Hon. Jas. T. Barber, Eau Claire, Wisconsin, and signed, Frank Steunenbergh.

By Mr. BUNDY.—What is the number.

By Mr. GORDON.—140.

Q. I will ask you if you received that letter from Governor Steunenbergh on the date of the stamp as received August 19, 1902?

(Deposition of James T. Barber.)

A. Yes, sir.

Q. On the second page of that letter is the following: "The boys here have taken titles since my last report in number to make the titles 69. Expect fifteen or twenty more within a week or two"; do you know to whom Governor Steunenberg refers when he said the boys had taken titles?

A. No, sir, I do not.

Q. Never inquired of him who he meant, did you?

By Mr. BUNDY.—I suppose you could make a pretty good guess at it now.

A. It was an affectionate way of speaking of the men who were making timber and stone entries, I suppose.

By Mr. BUNDY.—No, he spoke of the boys who were buying for him, Kinkaid.

A. Is that it; I don't know; I have forgotten.

(By Mr. GORDON.)

Q. Mr. Moon, in a letter from Mr. Palmer dated July 30, 1902, he uses this language: "Just received your wire; Phipps says scrip in question is all right and can be located on lands described"; do you know what lands were described to Mr. Phipps in the inquiry whether or not certain scrip he had could be located thereon?

A. My impression was that we asked him if it could be located on government timber land in southern Idaho.

Q. Was that by letter you made that inquiry?

(Deposition of James T. Barber.)

A. I have forgotten about that. That was my first experience in matters pertaining to scrip, and I got the information from some place that there was scrip, that scrip must be located on lands of similar character; that is some scrip could only be located on arid lands, on some kinds of lands that was not timber lands, and I asked the question whether it could be located on timber land in southern Idaho.

Q. In the next sentence of the same letter Mr. Palmer writes, "Have bought six thousand acres at \$5.35 from Mr. Stein subject to it being such scrip as you can use"; was that the same kind of scrip you were inquiring of Mr. Phipps about?

A. Yes, sir, that scrip was exactly the same scrip; that was Northern Pacific Railroad scrip

By Mr. BUNDY.—The Stein scrip and the Phipps scrip spoken of here are one and the same thing.

Q. Mr. Moon, do you know whether that six thousand acres referred to in Mr. Palmer's letter has ever been placed?

A. I think it has, yes, sir.

Q. Where was it placed?

A. I think it was divided up and placed in different places.

By Mr. KEIGWIN.—Divided up into how small parcels?

A. That I can't remember about definitely.

Q. As low as 40 or 60 acres?

A. I think not, although I don't remember.

(Deposition of James T. Barber.)

Q. Mostly in 160 acre blocks, do you think?

A. I think it was larger blocks than that. It was said I think in 3 or 4 different lots.

Q. That six thousand acre lot of scrip was located on surveyed lands? A. Yes, sir.

Q. And didn't reach unsurveyed lands?

A. No, sir.

Q. This part was located on surveyed lands?

A. Yes, sir.

By Mr. GORDON.—Did you ever have more than this six thousand acres that you got located on surveyed lands?

A. I am not sure about that, it is the only lot that I remember now, we had a time getting rid of that; there may have been other scrip bought by Mr. Chapman or through the office at Boise, but I don't remember of any.

Q. Any prior to 1904 at Boise?

A. Not that I remember of.

Q. He could not have bought any scrip there before the office was open?

A. No, I think not. The Stein scrip was bought some time early in the summer of 1902 and sent out to Steunenbergh to place in the Basin and he reported that he made various unsuccessful efforts to place it, first in the Basin and then in the Crooked River and finally in 6—4.

By Mr. BUNDY.—That Stein scrip was bought in your name was it? A. Yes, sir.

By Mr. GORDON.—Mr. Palmer bought that scrip, did he?

(Deposition of James T. Barber.)

A. He arranged the deal as I remember it.

Q. And it was paid for from this office?

A. Yes, sir, he bought it on the trip east, he stopped in St. Paul and saw Mr. Phipps as I remember it, and got in communication with Mr. Phipps through Mr. Stein and arranged for the purchase of it.

Q. Are there any letters in the files of the Barber Lumber Company or anywhere that you know of directing that, this land be, that this scrip be placed in *the either* Boise Basin or the Crooked river lands?

A. I presume there are, I don't know of any, I don't think of any, it was our understanding with the Governor that we were to furnish him scrip for that purpose, we bought scrip and sent it out to him for that purpose.

Q. The scrip was sent from Palmer to Steunenberg?

A. I think it was; Palmer was here to talk with him about it about the time just prior to the time he bought it. I think he closed the deal with Mr. Stein in St. Paul on his way back to Spokane from here. He probably instructed Steunenberg when he sent it to him, but only in a general way.

JAMES T. BARBER, recalled, testified as follows:

(By Mr. GORDON.)

Q. Mr. Barber, in a letter dated August 15-02 addressed to you, by A. E. Palmer, the first paragraph of the second page is headed "Entries," and

(Deposition of James T. Barber.)

then I find this expression. "I enclose complete list of entries, land office, costs on all have been paid, description on the first hundred should be correct as they have been checked with land office receipt." Do you know where that list of entries is?

A. No, sir.

Q. Do you remember ever having had the list of entries?

A. I don't remember anything about the list of entries, I paid very little attention to the details of the land matters at that time. Mr. Moon looked after the keeping of the records of the land purchases and I tried to provide the money.

By Mr. MOON.—That list was turned over to me and was one I kept until I turned over the deeds.

By Mr. BARBER.—All the details of the land part of the business Mr. Moon looked after?

By Mr. GORDON.—Mr. Moon, you have heard the letter I have just read Mr. Barber concerning the list of entries in the land office. Do you know anything about the list of entries referred to Mr. Palmer?

By Mr. MOON.—I know that I had various such lists and in many cases and they were in part duplicates of other lists, and as I think I testified before these were kept until they were checked with the deeds at the time the deeds were sent out to Boise. I considered a good many of such things simply as temporary memorandums and didn't return them to the Boise office with the deeds, but probably put them in the waste basket.

(Deposition of James T. Barber.)

Q. You don't know where they are now?

A. I don't know.

Q. That is your best recollection that you destroyed them? A. Yes, sir.

Q. Mr. Moon, I find in the files of the Barber Lumber Company a letter dated April 12-03, directed to Messrs. Barber and Moon, Eau Claire, Wisconsin, and signed Wm. Sweet. I ask you if you remember receiving that letter from Mr. Sweet?

A. I do not remember it particularly.

By Mr. BARBER.—I remember the letter.

By Mr. MOON.—I have a recollection of some letter coming from Mr. Sweet.

By Mr. GORDON.—Do you remember having seen the letter, Mr. Barber?

By Mr. BARBER.—What is the date of it?

By Mr. GORDON.—April 12-03.

By Mr. BUNDY.—That was the first you ever heard of him? A. Yes, sir.

By Mr. GORDON.—On the first page of this letter it says: "We have just looked over an agreement between you and Governor Steunenberg, dated a year and a month ago today." And then on page 5 he says: "Is the Governor under any obligation to you, if so what for? If you are out of money on the 12 claims held up, it ought to have come out of Kinkaid and Wells."

Q. At that time did you hold the receiver's receipts of the 12 claims that were held up, that were referred to here by Mr. Sweet?

A. I don't know.

(Deposition of James T. Barber.)

Q. And did you ever take up with Governor Steunenberg about that time the matter of the 12 claims spoken of by Mr. Sweet?

A. I submitted that letter to Governor Steunenberg and he said some statements in it were not as he understood, he said that he would answer the letter. I replied to the letter later on. I have forgotten just what I said but there was no reference; I don't remember anything about the question of claims or anything of that kind.

Q. Mr. Barber, I find in the files of the Barber Lumber Company a part of a letter signed Frank Steunenberg and the page I have is number 2. It reads as follows:

There is nothing to indicate the date of it, except text of the letter when the transaction would show about what time the letter referred to. The first word on the top line of the page is "great" and there is a paragraph which reads as follows: "I think it desirable to place the Basin deeds on record. Kinkaid want to replace about 20 with new ones. If you will send all the deeds to Mr. Borah, I will undertake to have the substitution made at once in order that the filing can be taken soon. If this procedure does not meet your approval, notify me at once. The old parties will want the old deeds returned to them, upon executing the new ones, Am still hammering away at Caston, endeavoring to scale him down, am afraid it is hopeless. Scofield's

(Deposition of James T. Barber.)

departure has had a quieting effect in general. Caston is a hard one.

Yours truly,

FRANK STEUNENBERG."

Q. Do you remember receiving that letter, Mr. Barber? A. I have no recollection of it.

Q. Do you remember having seen the letter before? A. No, sir.

By Mr. GORDON.—This letter is on the letter-head of the Idan-ha Hotel paper, Boise, Idaho.

(By Mr. GORDON.)

Q. Mr. Moon, in your letter to Mr. Palmer, dated March 13-02, I find on page 1172 of the D. R. Moon letter-press book, I find this statement. "The writer will send you a separate note at to where to procure funds." Have you a carbon copy or letter-press copy of that separate note you sent Mr. Palmer?

A. No, sir, I think I neglected to send it.

Q. Then in the next paragraph of the same letter it reads as follows: "At the time of checking up and auditing the matter of the investment to Sweet you will also audit the investment of Steunenberg and ascertain the amount he has invested in these enterprises on the same basis and in the same manner you passed on Sweet's account." Did Mr. Palmer ever send you the account of Steunenberg as he had audited it?

A. I think he advised us that; I have no distinct recollection of it; but I think that he advised us that Steunenberg had put in \$3,750.00.

(Deposition of James T. Barber.)

By Mr. BUNDY.—He didn't have a hell of a lot to audit, only \$3,750, and he got that on Sweet's note.

(By Mr. GORDON.)

Q. At the time that the contract was entered into with Sweet by Steunenberg and the day you wrote this letter, Mr. Moon, did you understand then, that all that Sweet and Steunenberg had was receiver's receipts? A. Yes, sir.

Q. And your instructions were that Palmer should pay for the title as soon as Steunenberg got these receiver's receipts in the hands of himself or Palmer, is that correct?

A. As I remember it, Steunenberg told us that he had these receipts and our instructions to Palmer was to go and investigate to see if he had, and he did go and investigate and advised us later on that he had sent receipts, check off receipts for a great number of claims and drawn us for the money, based upon that investigation or after he had made that investigation.

Q. And you forwarded the money to pay for those deeds were taken?

A. We forwarded the money to buy out Sweet just as we agreed to do. He had bought the claims as he told us and taken these final receipts; I don't remember particularly about the deed, but as I remember it he was to give the deed when he was paid in full for the claim, and in the meantime he had the receipt.

By Mr. BUNDY.—He was to pay in full when?

(Deposition of James T. Barber.)

By Mr. MOON.—When patents were issued.

(By Mr. GORDON.)

Q. What did you mean by this expression in the letter last referred to? “When you thus have checked over the account of Sweet and determined it to be correct and that his investment does exceed \$22,000.00 and that he has title in him to 6400 acres and has title practically perfected to substantially five thousand acres more and when all matters we have enumerated are properly transferred from him to us, advise us of the amount recorded and we will send you a draft therefor.”

By Mr. MOON.—What particular part of that do you wish?

By Mr. GORDON.—With reference to the title being practically perfected to substantially five thousand acres more, you referred in there to Sweet.

A. As I remember it, there were some, I have forgotten definitely, it seems as I remember it now; my impression is that he told us that he had bought, I was thinking he had bought some entire.

By Mr. BUNDY.—He says that there was 6400 acres.

A. He bought entire and the balance he made partial payments on.

(By Mr. GORDON.)

Q. Had you taken final receipts on the additional five thousand acres that was not represented to you at that time?

A. I think it was, I don't remember distinctly, it is a good while ago.

(Deposition of James T. Barber.)

Q. Was that the first proposition of Steunenberg that he had title to five thousand acres or sixty-four hundred acres and that he could secure twenty thousand acres more?

A. I know he expected to buy a lot more, but we were not supposed to pay for anything until he could buy it outright.

Q. That only had reference then to the 6400 acres?

A. That I have not clear in my mind now, but he had final receipts of everything that he expected us to pay for in the Sweet deal.

Q. That \$30,000.00 was the Sweet deal?

A. Yes, and he put in some \$22,000.00 as I remember it and we were to pay him \$33,000.00, fifty per cent increase over what he had invested.

Q. But there was no representation that Steunenberg at that time was selling more than the 64,000 acres, was there?

A. I think not, I don't remember about that though.

By Mr. BUNDY.—What he represented was, was that he had 6400 acres bought and paid for and he also represented that he had 5000 acres under contract.

(By Mr. GORDON.)

Q. Mr. Moon, in the letter written April 5-02 by A. E. Palmer to you from Spokane, Washington, I read this expression: "Of course Steunenberg will do the wire pulling."

By Mr. MOON.—That had reference to, some

(Deposition of James T. Barber.)

State lands that were to be sold along the Payette.

Q. Do you understand what wire pulling was necessary to get a bid in on these lands?

A. No, sir, I suppose that he meant that Mr. Steunenberg had some influence and friend, that is all I took it to mean.

(By Mr. BUNDY.)

Q. You never bid in State lands in the Payette or elsewhere, did you?

A. No, not in Idaho.

Q. In May, 1902, where did you keep the letterpress copies of the letters you sent?

A. In the D. R. Moon copy-book.

Q. Mr. Moon, in a letter, dated May 13, -02, addressed to S. G. Moon and signed A. E. Palmer of Spokane, Washington, in the second paragraph of the letter appears the following:

“There is a lot of fine timber in towns 6 and 7 range 4 east which I think can be located by scrip, that is why I wired asking when you are coming west.” And marked on the letter is “Answered May 21, 1902” by rubber stamp.

A. I have no answer stamp.

By Mr. BARBER.—That is my answer stamp. I may have answered the letter.

By Mr. BARBER.—When does that say answered?

By Mr. GORDON.—May 21-02.

By Mr. GORDON.—That is the one I read this morning as 661A. Did he explain that letter that the party is recalled June 12?

(Deposition of James T. Barber.)

By Mr. BUNDY.—No, that is all ready in.

By Mr. GORDON.—Mr. Moon, did you ever go to Washington or New York to meet any parties with a view to trying to get these claims that were held up through? A. No, sir.

Q. Mr. Moon, in some letter you have written here you have referred to a number of deeds taken in the name of Mr. Palmer having been conveyed to the Barber Lumber Company; do you remember that whenever Mr. Palmer received a deed from Steunenberg he made a deed, that is the deeds were taken while Mr. Palmer was looking after it in his name from the entrymen and sent by Mr. Steunenberg to him signed?

A. He forwarded the deed from the entryman to us. He made a deed to the Barber Lumber Company running from him.

Q. Do you remember how many deeds were taken that way or how many were sent that were made that way? A. I don't remember.

Q. Approximately, a dozen or twenty?

A. Oh, yes, I can't remember, the records will show. It was all the deeds, I think of the Basin deeds were taken that way during the year of 1902, at the time he was looking after our interest.

Q. Well, these deeds that were conveyed by Palmer to you were made by Palmer conveying the entries to the Barber Lumber Company; they were never recorded but subsequently all the property that had been acquired by Palmer in the interest of the Barber Lumber Company were conveyed to the Bar-

(Deposition of James T. Barber.)

ber Lumber Company by two deeds in the latter part of 1905 or the first part of 1906.

A. I had forgotten that if that is the case. I do know that we had to get a new deed from Palmer on account of some of the deeds from the entrymen having been changed after he had deeded to us.

Q. And in the letter you directed to Steunenberg when they wrote these deeds not to put any date in later than June-03?

A. I remember having written such a letter, yes.

Q. What was the reason of it?

A. That was because he had already deeded to us; none of those deeds to the Barber Lumber Company from Palmer individually were recorded.

A. That was evidently an arrangement made out there, if I ever knew about it, I had forgotten, I probably did but forgot. Every time he sent deeds he sent us his deeds.

(By Mr. GORDON to Mr. BARBER.)

Q. Mr. Barber, in a letter dated December 29-02, written by James T. Barber, President, to Hon. Frank Steunenberg, Caldwell, Idaho, page 48 (forty-eight) of the letter copy-book of the Barber Lumber Company, I find this expression:

“In making the deal with Mr. Kinkaid have the deeds run to A. E. Palmer the same as the other deeds you have been buying for us.” What deal with Kinkaid did that refer to?

A. That referred to the Crooked river claims that Mr. Kinkaid has represented he controlled and was selling to Mr. Steunenberg as I recollect it.

(Deposition of James T. Barber.)

Q. Then you bought the Crooked river claims and 6-4 both from Kinkaid?

A. No, sir, I don't think Kinkaid had anything to do with the 6-4 claims. I am not certain about that. This letter was written on December 29 and no purchases were made until the following February, in the meantime Palmer had gone to Canada to live. In the claims referred to, the claims were taken in the name of Horace S. Rand, a stockholder in the company.

Q. Now, Mr. Barber, on page 51 of the same book I find a letter dated January 6-03 written by James T. Barber, President, to Hon. Frank Steunenberg, Caldwell, Idaho. "We of course are much interested in learning what action you took in the matter with Kinkaid, and also and more particularly with reference to securing options on our proposed mill-site. Kindly keep us informed on everything you do, promptly."

Did Mr. Kinkaid have anything to do with purchasing the millsite property? A. No, sir.

Q. Mr. Barber, do you remember a letter written you by Governor Steunenberg in which he said: "If I take titles to claims in Crooked river, where am I to get the money, I may need a bunch on short notice." A. That has a familiar sound.

By Mr. BUNDY.—That was offered in evidence here.

A. I don't remember the details.

By Mr. GORDON.—Prior to that letter had you not had any talk or understanding with Steunenberg

(Deposition of James T. Barber.)

where he was to get the money to pay for them?

A. I don't remember the details of that, I should judge by the letter that we had not.

Q. Mr. Barber, in the letter written you January 21-03, but it is dated 02, the receiving stamp shows it was received January 26-03, signed Frank Steunenberg that letter uses this expression:

"I asked Downs concerning the sources of his information as to the north fork and he told me he had investigated every foot of the stream himself and talked with many of the men who had worked on the different drives."

Did you know who this Mr. Downs was at that time?

A. Yes, sir, I think I wrote Mr. Steunenberg, I think the letter is in evidence, to have Mr. Downs find out what information he could.

(By Mr. BUNDY.)

Q. Downs had been up in the timber with you before that? A. Yes, sir.

By Mr. BUNDY.—That was your first trip out there in September -02?

A. Yes, sir, my first trip out.

By Mr. GORDON.—Mr. Barber, do you know when you first employed Mr. Borah at an annual retainer?

A. I couldn't give you the date, do you know, Bundy?

(Deposition of James T. Barber.)

By Mr. BUNDY.—First of January, 1903, he was employed some time in January, the books show it.

By Mr. GORDON.—In a letter dated January 26, from the stamp showing that letter was received Jan. 30-03, written by Steunenber, Caldwell, Idaho, and addressed to you, I find this expression:

“Regarding the river franchise matter, the situation in my judgment is some better. Mr. Borah has spent some money in order to control the situation. He consulted with me first and I think the moves he has made *altimely* and judicious.”

Do you know what that money was spent for by Mr. Borah?

A. That would indicate in assisting us in getting franchises.

Q. Do you know to whom he paid it or spent it?

By Mr. BUNDY.—Not to anyone.

A. He may have bought some drinks for the legislators; they were in session at the time. At any rate we didn't get any franchises. They passed a law prohibiting exclusive franchises.

By Mr. BUNDY.—I suppose Borah has spent some money looking it up?

A. I presume so, I don't know.

By Mr. GORDON.—Mr. Barber, in the letter found on page 63 of the Barber Lumber Company's

(Deposition of James T. Barber.)

letter-press book, dated January 22-03, signed James T. Barber, President, to Hon. Frank Steunenberg, Boise, Idaho. "In the matter of Kinkaid lands we would say that if you are satisfied that Downs has estimated them fairly and a point can be made by taking in eight or ten of them without waiting for Taylor, you are at liberty to do so, but have Taylor estimate them as soon as possible."

Do you know what lands you have reference to there? A. Crooked river lands.

Q. And where did you get Downs' estimate?

A. Kinkaid must have gotten Downs' estimate from the entrymen.

